



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

GCCMS #2015-505-00073
EKME #3519757 v1

To: Matthew King, Deputy Minister
Pour:

Date:

Object: **SITE C CLEAN ENERGY PROEJCT - FISHERIES ACT S.35(2)(B)**
Objet: **AUTHORIZATION FOR SITE PREPARATION**

From / De: Susan Farlinger, Regional Director General, Pacific Region

Susan Farlinger AUG 27 2015

Via: Kevin Stringer, Senior Assistant Deputy Minister

Additional approvals:
Autre(s) approbation(s):

☐ Your Signature
Votre signature

☒ Information

☐ For Comments
Observations

☐ Material for the Minister
Documents pour le Ministre

Remarks:
Remarques:

DISTRIBUTION

Sharan Johal, Team Leader - Executive Secretariat

Drafting Officer/ Rédacteur: B. Naito, Sr. Fisheries Protection Biologist, (604) 666-2044 / Brad Fanos, *BF*
Regulatory Manager/ B. Antcliffe, Regional Director / ks

NE



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Sector

Secteur

ADM Title

Titre de SMA

2015-505-00073
EKME # 3519757v1

MEMORANDUM FOR THE DEPUTY MINISTER

s.21(1)(b)

s.23

SITE C CLEAN ENERGY PROEJCT – FISHERIES
ACT S.35(2)(B) AUTHORIZATION FOR SITE PREPARATION

(For Information)

SUMMARY OF ADVICE TO DEPUTY MINISTER

This Memorandum provides an update on DFO's pending decision to issue a *Fisheries Act* S.35(2)(b) authorization for site preparation works associated with the Site C Clean Energy Project (Site C) to BC Hydro (the Authorization).

DFO's timeline for submitting a recommendation to the RDG for a decision to issue the Authorization is dependent on the pending Court decision related to an injunction filed by First Nations against the provincial Site C site preparation related permits issued.

BC Hydro would have a significant concern if the Authorization is not issued in late September 2015 because the works requiring authorization are planned for early October and project construction contracts are in place. DFO understands that any delays will negatively affect the overall Site C project schedule and costs.

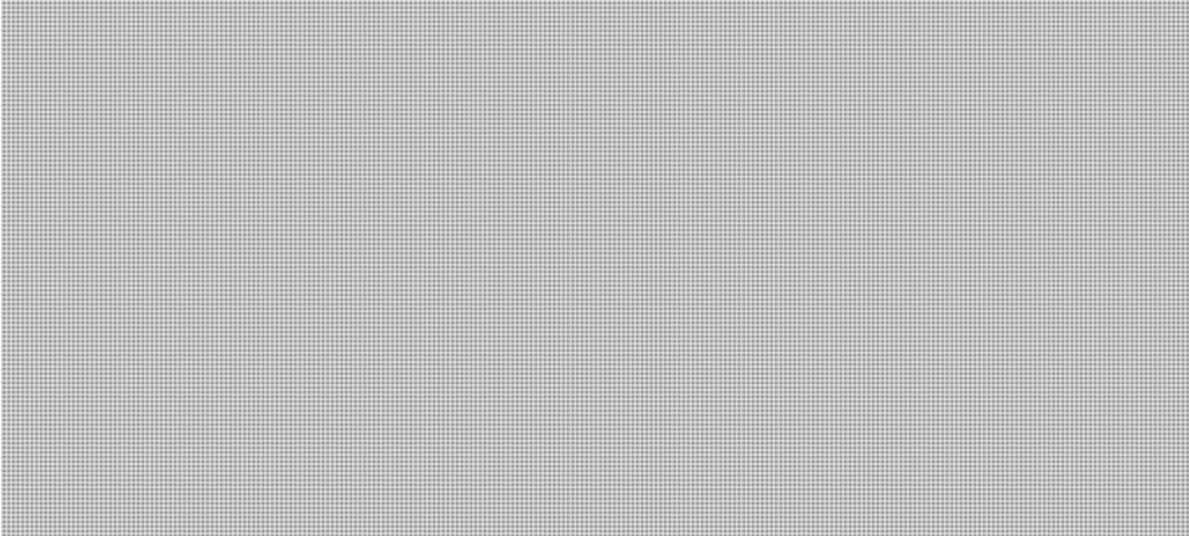
BACKGROUND

British Columbia Hydro and Power Authority (BC Hydro) has indicated that they would like DFO to issue the *Fisheries Act* S.35(2)(b) authorization for site preparation works associated with the Site C Clean Energy Project (Site C) (the Authorization) early September 2015.

.../2

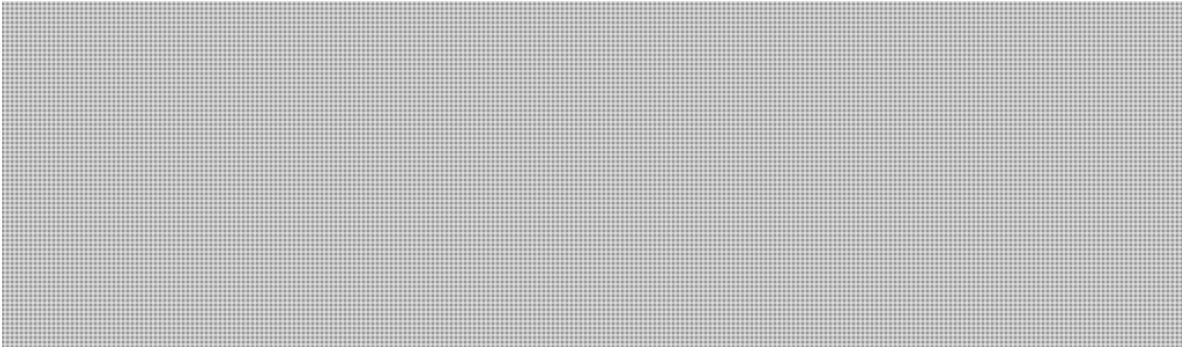
- 2 -

s.21(1)(a) On August 5th, 2015 the Prophet River First Nation and West Moberly First Nations
s.21(1)(b) submitted an injunction and new judicial review application in the BC Supreme Court
s.23 challenging the provincial Site C site preparation work related permits issued on July 7, 2015.
The injunction was heard on August 18 -20, 2015 and a Court decision is likely to come very
shortly thereafter.




STRATEGIC CONSIDERATIONS

If the Court's decision is not to support the injunction against the provincial permits (i.e. works can proceed) or does not make its decision prior to the end of August, DFO is planning to make a recommendation to the RDG for a decision to issue the Authorization in the week of August 31.



BC Hydro is anxious to have DFO issue the Authorization early September as they expect First Nations to file an injunction on the Authorization (regardless of the outcome on the provincial injunction).



.../3

- 3 -

Waiting until October 19, 2015 to issue the Authorization would be a significant concern to BC Hydro because the works requiring authorization are planned for early October with associated contracts already in place and any delays will negatively affect the overall project schedule with potential financial implications.

INTRADEPARTMENTAL CONSULTATIONS

DFO has been coordinating Aboriginal consultation activities and regulatory permitting timing with TC and has been sharing information with Canadian Environmental Assessment Agency and Major Projects Management Office through support from DoJ.

ADVICE AND RECOMMENDATIONS TO DEPUTY MINISTER

BC Hydro would have a significant concern if the *Fisheries Act* S.35(2)(b) authorization for site preparation works associated with the Site C Clean Energy Project is not issued in late September 2015 because the works requiring authorization are planned for early October with contracts in place and any delays will negatively affect the overall Site C project schedule and costs.

Kevin Stringer
Senior Assistant Deputy Minister



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

GCCMS #2015-505-00073
EKME # 3519757 v2

To: Matthew King, Deputy Minister
Pour:

Date:

Object: **SITE C CLEAN ENERGY PROJECT – FISHERIES ACT S.35(2)(B)**
AUTHORIZATION FOR SITE PREPARATION

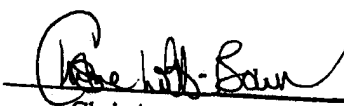
Objet:

From / De: Susan Farlinger, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister

Additional approval(s) /
Autre(s) approbation(s):

Approved by: 
N. Winfield

 SEP 16 2015
Christine Loth-Bown
Director General

☐ Your Signature
Votre signature

☒

Information

☐ For Comments
Observations

☐

Material for the Minister
Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Sharan Johal, Team Leader – Executive Secretariat

Drafting Officer/ Rédacteur: B. Naito, Sr. Fisheries Protection Biologist, (604) 666-2044 / T.
Gordanier, A/Manager of Major Projects Coordination / Brad Fanos, Regulatory Manager / B.
Antcliffe, Regional Director / ks



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Ecosystems and Fisheries Management
Kevin Stringer, Senior Assistant Deputy Minister

Gestion des écosystèmes et des pêches
Kevin Stringer, Sous-ministre adjoint

2015-505-00073
EKME # 3519757v2

MEMORANDUM FOR THE DEPUTY MINISTER

SITE C CLEAN ENERGY PROEJCT – FISHERIES
ACT S.35(2)(B) AUTHORIZATION FOR SITE PREPARATION
(For Information)

SUMMARY OF ADVICE TO DEPUTY MINISTER

The Site C Clean Energy Project, a proposal to construct a third hydroelectric dam and generating station on the Peace River in northeastern B.C., received environmental approvals to proceed from the provincial and federal governments in October 2014.

The British Columbia Hydro and Power Authority (BC Hydro, the Proponent) has applied for a *Fisheries Act* authorization to conduct the initial site preparation works associated with the project this fall. These first proposed works are well understood and the mitigation and offsetting measures are expected ensure the ongoing productivity and sustainability of CRA fisheries resources.

The 90-day regulatory time-limit for making a decision on issuance of a *Fisheries Act* authorization was not initiated due to the requirement for DFO to engage in Aboriginal consultation.

Treaty 8 member First Nations filed the injunction application on in early and on August 28, 2015, the court dismissed the application.

The Proponent intends to commence works by the first week of October 2015. As DFO has fulfilled its consultation obligations, the Department will proceed with issuance of a *Fisheries Act* authorization for this initial phase of Project works. Two further authorizations are anticipated in relation to construction of the main civil works (i.e., the dam and generating station, and subsequent reservoir filling and operations).

s.21(1)(b)
s.23

.../2

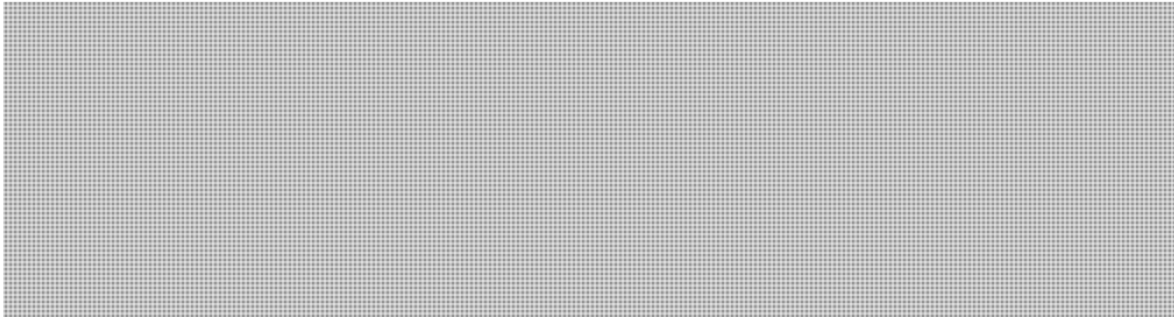
- 2 -

BACKGROUND

The Site C Clean Energy Project ('the Project') is a proposal to construct and operate a third dam and hydroelectric generating station on the Peace River in northeast B.C. BC Hydro ('the Proponent') has applied for a s.35(2)(b) *Fisheries Act* authorization for site preparation works associated with the Project, and the Department after reviewing the Proponent's application determined that serious harm to fish is likely, and a *Fisheries Act* authorization would therefore be required. Following this determination, the Department conducted consultation with affected Aboriginal groups on the proposed works, and mitigation and offsetting measures, and advised the groups of the Department's intent to issue an authorization. The 90-day regulatory time limit associated with making a determination on issuance of an authorization was not initiated to fulfill DFO's consultation obligations. This "clock" remains ceased at this time.

s.21(1)(b)

s.23



Treaty 8 member First Nations (including Prophet River and West Moberly First Nation) filed the injunction application on August 5, 2015, and on August 28, 2015 the court dismissed the application.

On the same day (August 28th), a judicial review application of the Governor-in-Council's EA decision for the Project filed by the same Treaty 8 member First Nations in the Federal Court, was also dismissed.

Given the courts findings, and because crown consultation has been deemed adequate, DFO is now in a position to issue an authorization for the site preparation works.

STRATEGIC CONSIDERATIONS: POLICY DEVELOPMENT

The proponent has indicated that they have put in place contractual arrangements associated with commencing site preparation works in the first week of October 2015, and delays in issuance of permits beyond the end of September is likely to delay construction scheduling and could significantly increase costs for this publically funded Project.

BC Hydro has stated that, "the impact of a delay of one month or less is uncertain, however the effect is expected to be somewhere between \$100 million of additional costs and a one year delay in the overall project schedule with resulting additional costs of \$335 million. If a delay of more than one month were to occur, BC Hydro believes it is highly likely that the

.../3

- 3 -

current project schedule could not be maintained, and there would likely be a one-year delay in the overall project schedule and in-service date.

Two additional authorizations are anticipated for more complex Project components related to construction of the main civil works (i.e., construction of the dam and generating station, and subsequent reservoir filling and operations).

As noted above, Aboriginal groups have previously filed injunction applications against provincial permits, and the Proponent anticipates that federal permits (including DFO's authorization) will face similar circumstances. As such, the Proponent would prefer that the authorization be issued as soon as possible in anticipation of potential delays associated with a potential injunction against issued federal permits.

INTERDEPARTMENTAL CONSULTATIONS

DFO has been coordinating Aboriginal consultation activities and regulatory permitting timing with Transport Canada (TC) which also has permits to issue in relation to the site preparation works.

Both DFO and TC are endeavoring to issue their regulatory approvals concurrently. As such, TC has also sent a memorandum to their Deputy Minister detailing their plans to issue a permit for the site preparation works in the near future. DFO will be continuing to liaise with TC over the coming days to ensure that both Departments are prepared to issue their respective approvals, and that they can be issued in a coordinated manner.

DFO and TC have also been sharing information with the Canadian Environmental Assessment Agency and the Major Projects Management Office with support from DoJ.

ADVICE AND RECOMMENDATIONS TO DEPUTY MINISTER

DFO has received the necessary information to support the issuance of a *Fisheries Act* authorization and Crown consultation has been deemed adequate. Therefore, DFO is now in a position to issue an authorization for the Site C preparation works. It is anticipated that the *Fisheries Act* authorization and Transport Canada permit for the proposed Site C preparation works will be issued prior to September 30, 2015.

Kevin Stringer
Senior Assistant Deputy Minister



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

UNCLASSIFIED

GCCMS #2015-505-00073
EKME # 3519757 v2

To: Matthew King, Deputy Minister
Pour:


Date:

Object: **SITE C CLEAN ENERGY PROJECT – FISHERIES ACT S.35(2)(B)**
AUTHORIZATION FOR SITE PREPARATION
Objet:

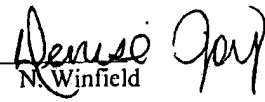
From / De: Susan Farlinger, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister
Michael Pearson, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

 SEP 21 2015
Christine Loth-Bown
Director General

Approved by:


for N. Winfield

<input type="checkbox"/>	Your Signature Votre signature	<input checked="" type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Sharan Johal, Team Leader – Executive Secretariat

Drafting Officer/ Rédacteur: B. Naito, Sr. Fisheries Protection Biologist, (604) 666-2044 / T.
Gordanier, A/Manager of Major Projects Coordination / Brad Fanos, Regulatory Manager / B.
Antcliffe, Regional Director / ks



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Ecosystems and Fisheries Management
Kevin Stringer, Senior Assistant Deputy Minister

Gestion des écosystèmes et des pêches
Kevin Stringer, Sous-ministre adjoint

UNCLASSIFIED

2015-505-00073
EKME # 3519757v2

MEMORANDUM FOR THE DEPUTY MINISTER

SITE C CLEAN ENERGY PROJECT – FISHERIES
ACT S.35(2)(B) AUTHORIZATION FOR SITE PREPARATION
(For Information)

SUMMARY OF ADVICE TO DEPUTY MINISTER

The Site C Clean Energy Project, a proposal to construct a third hydroelectric dam and generating station on the Peace River in northeastern B.C., received environmental approvals to proceed from the provincial and federal governments in October 2014.

The British Columbia Hydro and Power Authority (BC Hydro, the Proponent) has applied for a *Fisheries Act* authorization to conduct the initial site preparation works associated with the project this fall. These first proposed works are well understood and the mitigation and offsetting measures are expected ensure the ongoing productivity and sustainability of CRA fisheries resources.

The 90-day regulatory time-limit for making a decision on issuance of a *Fisheries Act* authorization was not initiated due to the requirement for DFO to engage in Aboriginal consultation.

Treaty 8 member First Nations filed the injunction application on in early and on August 28, 2015, the court dismissed the application.

The Proponent intends to commence works by the first week of October 2015. As DFO has fulfilled its consultation obligations, the Department will proceed with issuance of a *Fisheries Act* authorization for this initial phase of Project works. Two further authorizations are anticipated in relation to construction of the main civil works (i.e., the dam and generating station, and subsequent reservoir filling and operations).

s.21(1)(b)
s.23

.../2

UNCLASSIFIED

- 2 -

BACKGROUND

The Site C Clean Energy Project ('the Project') is a proposal to construct and operate a third dam and hydroelectric generating station on the Peace River in northeast B.C. BC Hydro ('the Proponent') has applied for a s.35(2)(b) *Fisheries Act* authorization for site preparation works associated with the Project, and the Department after reviewing the Proponent's application determined that serious harm to fish is likely, and a *Fisheries Act* authorization would therefore be required. Following this determination, the Department conducted consultation with affected Aboriginal groups on the proposed works, and mitigation and offsetting measures, and advised the groups of the Department's intent to issue an authorization. The 90-day regulatory time limit associated with making a determination on issuance of an authorization was not initiated to fulfill DFO's consultation obligations. This "clock" remains ceased at this time.

s.21(1)(b)

s.23

Treaty 8 member First Nations (including Prophet River and West Moberly First Nation) filed the injunction application on August 5, 2015, and on August 28, 2015 the court dismissed the application.

On the same day (August 28th), a judicial review application of the Governor-in-Council's EA decision for the Project filed by the same Treaty 8 member First Nations in the Federal Court, was also dismissed.

Given the courts findings, and because crown consultation has been deemed adequate, DFO is now in a position to issue an authorization for the site preparation works.

STRATEGIC CONSIDERATIONS: POLICY DEVELOPMENT

The Proponent has indicated that they have put in place contractual arrangements associated with commencing site preparation works in the first week of October 2015, and delays in issuance of permits beyond the end of September is likely to delay construction scheduling and could significantly increase costs for this publically funded Project.

BC Hydro has stated that, "the impact of a delay of one month or less is uncertain, however the effect is expected to be somewhere between \$100 million of additional costs and a one year delay in the overall project schedule with resulting additional costs of \$335 million". If a delay of more than on month were to occur, BC Hydro believes it is highly likely that the current project schedule could not be maintained, and there would likely be a one-year delay in the overall project schedule and in-service date.

UNCLASSIFIED

- 3 -

Two additional authorizations are anticipated for more complex Project components related to construction of the main civil works (i.e., construction of the dam and generating station, and subsequent reservoir filling and operations).

As noted above, Aboriginal groups have previously filed injunction applications against provincial permits, and the Proponent anticipates that federal permits (including DFO's authorization) will face similar circumstances. As such, the Proponent would prefer that the authorization be issued as soon as possible in anticipation of potential delays associated with a potential injunction against issued federal permits.

The application for authorization submitted by BC Hydro has been deemed complete but the 90 day time limit to either issue the authorization or refuse to do so was ceased as Aboriginal consultation was required. Now that Aboriginal consultation has been deemed complete, the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* (The Regulations) allow for a maximum of 90 days for the authorization to be issued (or refused). However, priority authorizations may be issued considerably faster (i.e. within days) if required.

INTERDEPARTMENTAL CONSULTATIONS

DFO has been coordinating Aboriginal consultation activities and regulatory permitting timing with Transport Canada (TC) which also has permits to issue in relation to the site preparation works.

Both DFO and TC are endeavoring to issue their regulatory approvals concurrently. As such, TC has also sent a memorandum to their Deputy Minister detailing their plans to issue a permit for the site preparation works in the near future. DFO will be continuing to liaise with TC over the coming days to ensure that both Departments are prepared to issue their respective approvals, and that they can be issued in a coordinated manner.

DFO and TC have been sharing information with the Canadian Environmental Assessment Agency and the Major Projects Management Office with support from DoJ.

ADVICE AND RECOMMENDATIONS TO DEPUTY MINISTER

DFO has received the necessary information to support the issuance of a *Fisheries Act* authorization and Crown consultation has been deemed adequate. Therefore, DFO is now in a position to issue an authorization for the Site C preparation works. It is anticipated that the *Fisheries Act* authorization and Transport Canada permit for the proposed Site C preparation works will be issued prior to September 30, 2015.

Kevin Stringer
Senior Assistant Deputy Minister



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CONFIDENTIAL
MECTS # 2015-505-00097
EKME # 3562135

To: Matthew King
Pour:

Date:

SUBJECT: **CURRENT STATUS FOR SITE C**
CLEAN ENERGY HYDROELECTRIC PROJECT, BC

Objet:

From / De: Rebecca Reid, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister, EFM

Philippe Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

Christine Loth-Bown, Director General, EFM *CLB* JAN - 7 2016

<input checked="checked" type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program
(604) 666-3909 / C. Webb, Regional Director, Ecosystems Management Branch / st



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Ecosystems & Fisheries Management
Assistant Deputy Minister

Gestion des écosystèmes et des pêches
Sous-ministre adjoint

CONFIDENTIAL

2015-505-00097

EKME # 3562135

MEMORANDUM FOR THE MINISTER

**CURRENT STATUS FOR SITE C
CLEAN ENERGY HYDROELECTRIC PROJECT, BC
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

BC Hydro is constructing the Site C Clean Energy Project (the Project), a hydroelectric dam on the Peace River in northeast British Columbia, near Fort St. John. This will be the third major dam on the Peace River and will result in the creation of a reservoir approximately 83 kms long and will be, on average, two to three times the width of the current river.

Federal and provincial environmental assessment decisions were announced in October 2014. The federal Minister of Environment made an environmental assessment decision concluding that the Project would result in significant adverse environmental effects, but that, following a Governor in Council determination, the significant environmental effects of the Project were justified in the circumstances.

In order to proceed with the Project, federal regulatory approvals are required from Fisheries, Oceans and the Canadian Coast Guard (the Department) as well as Transport Canada. On September 30, 2015, the Department issued a paragraph 35(2)(b) authorization under the *Fisheries Act* for the site preparatory construction activities related to the Project.

The Project has been subject to multiple rounds of litigation by Indigenous groups and by landowners opposed to the Project. On November 25, 2015, the West Moberly First Nations and Prophet River First Nation wrote to the Prime Minister, yourself, and nine other Cabinet ministers requesting a review of the previous government's environmental assessment decision. The Privy Council Office is working with departments, including Natural Resources Canada, to coordinate a response.

On December 10, 2015, the Assembly of First Nation's Chiefs passed a resolution calling for all federal regulatory permits to be put on hold and for a review of the Government's environmental assessment decision on the project.

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

.../2

CONFIDENTIAL

BACKGROUND

A Canada-British Columbia joint review panel (the Panel) conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act* 2012 for the proposed Site C Clean Energy Project. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights and to fish and fish habitat which cannot be mitigated.

The Governor in Council subsequently determined that environmental effects of the Site C project are justified in the circumstances and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which BC Hydro must legally comply.

Fisheries Act Authorization Issues:

On September 30, 2015, the Department issued an authorization under paragraph 35(2)(b) of the *Fisheries Act* for site preparatory construction activities related to the Project. On December 15, 2015, the Department received an Application for Authorization for the main civil works for the Project.

On October 20, 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. Under its own initiative, BC Hydro ceased further work on the causeway. Consistent with the interim Fisheries Protection Compliance Protocol between the Fisheries Protection Program and Conservation and Protection Program, a site visit and assessment of the site was conducted.

On December 16, 2015, the department issued a Warning Letter to BC Hydro advising them that the causeway construction works in the Peace River resulted in an offence under the *Fisheries Act* because they did not comply with the conditions of the authorization issued to them for the site preparation works. BC Hydro has responded to this issue and the department is continuing to monitor this Project to ensure compliance with the authorization.

Indigenous Issues:

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to you, the Prime Minister, and other cabinet ministers requesting a review of the federal decision to approve the Project. They also asked the Government to work with First Nations to establish a comprehensive framework for engagement on major development projects.

At the recent Assembly of First Nation's Chiefs (December 8-11, 2015), a resolution was passed which called for all federal Site C permits to be put on hold and for a review of the Governor in Council decision on this Project.

.../3

CONFIDENTIAL

STRATEGIC CONSIDERATIONS: PROGRAM POLICY DEVELOPMENT

On November 5-6, 2014, four Indigenous groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations and McLeod Lake Indian Band) and a landowner association (Peace Valley Landowner Association) filed two applications for judicial review in the Federal Court, seeking judicial review of the Governor in Council's October 14, 2014 Order in Council, concluding that the significant adverse environmental effects that the Project are likely to cause are justified in the circumstances.

In August 2015, the Federal Court dismissed the two applications for judicial review of the decision of the Governor in Council. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nations, appealed the Federal Court decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

There has been significant recent local media attention related to this project.

INTRADEPARTMENTAL CONSULTATIONS

No other departments/agencies were consulted in the development of this briefing note.

INTERDEPARTMENTAL CONSULTATIONS

The Department has been coordinating with other federal departments (Transport Canada, Canadian Environmental Assessment Agency and Major Projects Management Office) on litigation issues, and regulatory permitting consultations and issuance.

ADVICE AND RECOMMENDATIONS TO MINISTER

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

Matthew King
Deputy Minister

Leslie MacLean
Associate Deputy Minister



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CONFIDENTIAL
MECTS # 2015-505-00097
EKME # 3562135

To: Matthew King
Pour:

Date:

SUBJECT: **CURRENT STATUS FOR SITE C**
CLEAN ENERGY HYDROELECTRIC PROJECT, BC

Objet:

From / De: Rebecca Reid, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister, EFM

Philippe Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

Christine Loth-Bown, Director General, EFM

FEB 12 2016

<input checked="checked" type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program
(604) 666-3909 / C. Webb, Regional Director, Ecosystems Management Branch / st



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Ecosystems & Fisheries Management
Assistant Deputy Minister

Gestion des écosystèmes et des pêches
Sous-ministre adjoint

CONFIDENTIAL

2015-505-00097

EKME 3566301

MEMORANDUM FOR THE MINISTER

**CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT, BC
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

BC Hydro is constructing the Site C Clean Energy Project, a hydroelectric dam on the Peace River in northeast British Columbia, near Fort St. John. This will be the third major dam on the Peace River and will result in the creation of an 83 km reservoir.

A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act* 2012. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights, and to fish and fish habitat, which cannot be mitigated. The Governor in Council subsequently determined that environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a decision statement with conditions that BC Hydro must legally meet.

Regulatory approvals are required from Fisheries, Oceans and the Canadian Coast Guard, as well as Transport Canada. On September 30, 2015, the Department issued a section 35(2)(b) authorization under the *Fisheries Act* for the site preparatory construction activities. On December 15, 2015, BC Hydro submitted a second application for a section 35(2)(b) authorization for the construction of the main civil works. BC Hydro is requesting that the Department issue a *Fisheries Act* S.35(2)(b) authorization prior to the current scheduled construction start date of April 1, 2016.

The Project has been subject to multiple rounds of litigation by Indigenous groups and by landowners. On November 25, 2015, the West Moberly First Nation and Prophet River First Nation wrote to the Prime Minister, yourself, and nine other Cabinet ministers requesting a review of the previous government's environmental assessment decision. On December 10, 2015, the Assembly of First Nation's Chiefs passed a resolution calling for all federal regulatory permits to be put on hold and for a review of the Governor in Council decision.

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

.../2

CONFIDENTIAL

BACKGROUND

A Canada-British Columbia joint review panel (the Panel) conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act* 2012 for the proposed Site C Clean Energy Project. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights and to fish and fish habitat which cannot be mitigated. The Governor in Council (GiC) subsequently determined through an Order in Council that environmental effects of the Site C project are justified in the circumstances and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which BC Hydro must legally comply.

Fisheries Act Authorization Issues:

On September 30, 2015, the Department issued an authorization under paragraph 35(2)(b) of the *Fisheries Act* for site preparatory construction activities related to the Project. On December 15, 2015, the Department received an Application for Authorization for the main civil works for the Project (i.e., construction of the dam, generating station and spillways, and reservoir filling).

On October 20, 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. Under its own initiative, BC Hydro ceased further work on the causeway. Consistent with the interim Fisheries Protection Compliance Protocol between the Fisheries Protection Program and Conservation and Protection Program, the Department conducted a site visit and assessment of the site.

On December 16, 2015, the Department issued a Warning Letter to BC Hydro advising them that the causeway construction works in the Peace River resulted in an offence under the *Fisheries Act* because they did not comply with the conditions of the authorization issued to them for the site preparation works. BC Hydro has responded to this issue and the Department is continuing to monitor this Project to ensure compliance with the authorization.

Indigenous Issues:

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to you, the Prime Minister, and other cabinet ministers requesting a review of the federal decision to approve the Project. They also asked the Government to work with First Nations to establish a comprehensive framework for engagement on major development projects.

At the recent Assembly of First Nation's Chiefs (December 8-11, 2015), a resolution was passed which called for all federal regulatory permits to be put on hold and for a review of the Governor in Council decision on this Project.

.../3

- 3 -

CONFIDENTIAL

STRATEGIC CONSIDERATIONS: PROGRAM POLICY DEVELOPMENT

On November 5-6, 2014, four Indigenous groups (Doig River, Prophet River, and West Moberly First Nations and McLeod Lake Indian Band) and a landowner association (Peace Valley Landowner Association) filed two applications for judicial review in the Federal Court, seeking judicial review of the GiC's October 14, 2014 Order in Council, concluding that the significant adverse environmental effects that the Project are likely to cause are justified in the circumstances.

In August 2015, the Federal Court dismissed the two applications for judicial review of the decision of the GiC. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nation, appealed that decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

There has been and continues to be significant recent local media attention related to this Project.

INTRADEPARTMENTAL CONSULTATIONS

No other sectors were consulted in the development of this memorandum.

INTERDEPARTMENTAL CONSULTATIONS

The Department has been coordinating with other federal departments (Transport Canada, Canadian Environmental Assessment Agency and Major Projects Management Office) on litigation issues, and regulatory permitting consultations and issuance.

ADVICE AND RECOMMENDATIONS TO MINISTER

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the Project, and will provide regular briefings on key activities associated with the review as they occur.

Matthew King
Deputy Minister

Leslie MacLean
Associate Deputy Minister

Desantis, Edward

From: Gordanier, Tania s.21(1)(b)
Sent: Thursday, April 21, 2016 4:31 PM s.23
To: Sladic, Ramona
Cc: Chernoff, Eric
Subject:
Attachments:

Hi Ramona –

Tania

Tania Gordanier
A/Manager, Contaminated Sites & Major Project Coordination
Fisheries and Oceans Canada
(613) 990-8850 | facsimile / télécopieur 613-990-4810
Fisheries and Oceans Canada / Pêches et Océans Canada
200 Kent Street / 200 rue Kent, Mailstop 8E240
Ottawa, Ontario
K1A 0E6

**Pages 22 to / à 29
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CLASSIFICATION
CCGMS # 2016-009-00581
EKME # 3625319

To: Leslie MacLean
Pour:

Date: May 13, 2016

Object: **RESPONSE TO MINISTERIAL ENQUIRY Q221 ON SITE C PROJECT**
Objet:

From / De: Nicholas Winfield, A/ DG, Ecosystems Management

JUN 06 2016

Via: Phillipe Morel, ADM, Ecosystems and Fisheries Management

Kevin Stringer, Senior Assistant Deputy Minister, EFM

Additional approvals:
Autre(s) approbation(s):

☒

Your Signature
Votre signature

☐

Information

☐

For Comments
Observations

☐

Material for the Minister
Documents pour le Ministre

Remarks:
Remarques:

DISTRIBUTION

E. Chernoff (613-993-7361) / T. Gordanier / gb



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Ecosystems and Fisheries
Management

Gestion des écosystèmes et des pêches

Assistant Deputy Minister

Sous-ministre adjoint

UNCLASSIFIED

2016-009-00581
EKME #3625319

MEMORANDUM FOR THE DEPUTY MINISTER

SECTOR HEAD ATTESTATION ON QUESTION 221
(DECISION)

SUMMARY OF ADVICE TO DEPUTY MINISTER

On May 11, 2016, Member of Parliament Fin Donnelly requested information on the Site C Clean Energy Project in British Columbia.

Specifically the information requested was as follows: "with regard to the Fisheries and Oceans Canada (DFO) and the construction of the Site C hydroelectric dam in northeastern British Columbia: (a) how many DFO staff members are responsible for monitoring the project's compliance with fish habitat protections; (b) how many independent environmental monitors are responsible for the project's compliance with fish habitat protections; (c) how many onsite DFO inspections have taken place since construction began and when did they take place; (d) how many onsite inspections have independent environmental monitors conducted since construction began and when did they take place; and (f) has the Department consulted with local First Nations to measure the impact of the project on their fishing rights?"

The response to this Order Paper Question (Q-221) is due on June 13, 2016 in the Minister's Office in order to meet the Privy Council Office deadline of June 20, 2016.

A response to question Q-221 for Fisheries and Oceans Canada, as per the Privy Council Office's instructions, has been prepared. I confirm that this response is based on a thorough analysis of the question, a comprehensive review of all relevant records and that the response to be tabled in Parliament is accurate and complete.

It is recommended you sign the attached Statement of Completeness (**TAB 1**) to attest that the information contained in the proposed response to Q-221 (**TAB 2**) is accurate and as complete as possible. If you sign Statement of Completeness, then the proposed response to Ministerial Enquiry Q221 will be sent to the Minister's office for signature by him or the Parliamentary Secretary.

As required, the cost of the ministerial response to Q-227 (**Tab 3**) has also been provided.

BACKGROUND

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act 2012*.

The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

BC Hydro was issued a *Fisheries Act* authorization on September 30, 2015 to conduct the initial site preparation works associated with the project.

On December 15, 2015, DFO received a second application for a *Fisheries Act* authorization for the main civil works of the project (i.e. construction of the dam, generating station and spillways, and reservoir filling). Operations of the Site C facility are included in the second application, and as a result no further applications for authorizations under the *Fisheries Act* are anticipated.

On January 25, 2016, DFO advised BC Hydro that their application was complete but the 90-day time limit for DFO to make a decision on their application under the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* ceases to apply as Indigenous consultation is required.

The second *Fisheries Act* application is currently under review.

STRATEGIC CONSIDERATIONS: POLICY DEVELOPMENT

On October 20, 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. Under its own initiative, BC Hydro ceased further work on the causeway. Consistent with the interim Fisheries Protection Compliance Protocol between the Fisheries Protection Program and Conservation and Protection Program, the Department conducted a site visit and assessment of the site.

On December 16, 2015, the Department issued a Warning Letter to BC Hydro advising them that the causeway construction works in the Peace River resulted in an offence under the *Fisheries Act* because they did not comply with the conditions of the authorization issued to them for the site preparation works. BC Hydro has responded to this issue and the Department is continuing to monitor this Project to ensure compliance with the authorization. To date, no further compliance issues have been identified by DFO.

.../3

There is considerable opposition to the project from some Indigenous groups. The Department continues to consult with affected First Nations about the second application for a *Fisheries Act* authorization.

INTRADEPARTMENTAL CONSULTATIONS

Fisheries Protection Program Staff from Pacific Region were consulted in the development of the response to this ministerial inquiry.

INTERDEPARTMENTAL CONSULTATIONS

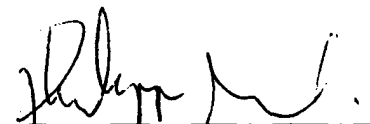
No other departments were consulted in the development of this memorandum or the ministerial inquiry.

ADVICE AND RECOMMENDATIONS TO DEPUTY MINISTER

It is recommended you sign the attached Statement of Completeness (**TAB 1**) to attest that the information contained in the proposed response to Q-221 is accurate and as complete as possible.

If you sign Statement of Completeness (**TAB 1**), then the proposed response to Ministerial Enquiry Q221 (**TAB 2**) will be sent to the Minister's office for signature by him or the Parliamentary Secretary.

Kevin Stringer
Senior Assistant Deputy Minister
Ecosystems and Fisheries Management



Philippe Morel
Assistant Deputy Minister, Operations
Ecosystems and Fisheries Management

JUN 01 2016

- ☐ I concur with the recommendations
- ☐ I do not concur with the recommendations

Leslie MacLean
A/Deputy Minister

Attachments (3)

1. TAB 1 – Statement of Completeness
2. TAB 2 - Response to Ministerial Enquiry Q221
3. TAB 3 - Cost of Ministerial Response to Written Question Q- 221

Name of organization
Fisheries and Oceans Canada including the Canadian Coast Guard

STATEMENT OF COMPLETENESS

RESPONSE TO WRITTEN QUESTION, Q- 221

Name of Parliamentarian : **Mr. Donnelly** Constituency : **Port Moody-Coquitlam**

Date of Inquiry: **April 28, 2016**

A) 1. Briefly describe records, analysis and consultations on which the proposed response is based:

Fisheries Protection staff in the Pacific region and DFO's Conservation and Protection Program were consulted in the compilation of this information. The proposed response is based on Fisheries and Oceans reviews pursuant to the fisheries protection provisions of the *Fisheries Act*.

Lead official: Nick Winfield, DG, Ecosystems Management

2. Were publicly available documents used to draft the response?

Yes

No

If yes, please list titles and dates below:

☐☒

For the purposes of this response, DFO relied on its internal records and consultations with Fisheries Protection staff in the Pacific region and DFO's Conservation and Protection Program

B) Describe any limitations, considerations and/ or data quality statements that apply to this response:

Yes

No

☐☒

None have been identified.

- C) Have information or documents relevant to this response been disclosed publicly, in any manner (e.g. access to information request or request from the Library of Parliament)? If yes, please identify relevant documents and explain any differences in the proposed response.
- | Yes | N/A |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |

There has been no information relevant to this response disclosed publicly.

Attestation:

As the Designated Senior Official for **Fisheries and Oceans Canada**

I attest that the information contained in the proposed response Q-221, based on the records and limitations described in this Statement of Completeness, is accurate and as complete as possible.

Signature

Date

Leslie Maclean

A/Deputy Minister

Name of Designated Senior Official

Title



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-221	BY / DE Mr. Donnelly (Port Moody-Coquitlam)	DATE May 11, 2016
---	--	----------------------

Reply by the Minister of Fisheries, Oceans and the Canadian Coast Guard
Réponse du ministre des Pêches, des Océans et de la Garde Côtière canadienne

Honourable Dominic LeBlanc

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

With regard to the Department of Fisheries and Oceans (DFO) and the construction of the Site C hydroelectric dam in northeastern British Columbia: (a) how many DFO staff members are responsible for monitoring the project's compliance with fish habitat protections; (b) how many independent environmental monitors are responsible for the project's compliance with fish habitat protections; (c) how many onsite DFO inspections have taken place since construction began and when did they take place; (d) how many onsite inspections have independent environmental monitors conducted since construction began and when did they take place; and (f) has the Department consulted with local First Nations to measure the impact of the project on their fishing rights?

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL



TRANSLATION
TRADUCTION



- a) Four staff members from Fisheries and Oceans Canada (DFO) have been involved in monitoring the project's compliance with the fisheries protection provisions of the *Fisheries Act*. This includes three staff from DFO's Fisheries Protection Program and one from DFO's Conservation and Protection Program. All DFO staff are located the Pacific Region. The Canadian Environmental Assessment Agency and the BC Environmental Assessment Office are also conducting periodic monitoring for compliance with binding conditions from the federal and provincial environmental assessments.
- b) DFO does not utilize independent environmental monitors to monitor project compliance with the fisheries protection provisions of the *Fisheries Act*. An independent environmental monitor is a requirement of the environmental assessment certificate issued by the province of BC for the project. As a result, the number of independent monitors is determined by the BC Environmental Assessment Office and DFO is not privy to this information.

... /2

- 2 -

- c) Four onsite inspections have taken place since DFO issued the *Fisheries Act* authorization for site preparation works for the project on September 30, 2015. These site visits were conducted by Fisheries Protection Program staff on November 26, 2016, November 27, 2016 and March 30, 2016 and an inspection by DFO's Conservation and Protection Program staff was undertaken on October 28, 2015.
- d) The number of onsite inspections by independent environmental monitors since construction began is unknown. DFO is not privy to this information because the requirement for an independent environmental monitor is a condition of the provincial Environmental Assessment Certificate for the project and the frequency of inspections is determined by the British Columbia Environmental Assessment Office.
- e) Yes, the Department has consulted, and continues to consult with local First Nations in relation to the potential impacts of the project on their Aboriginal and treaty rights, including fishing rights. Consultations occurred during the environmental assessment process for the project and more recently during consideration of regulatory approvals for the project. Consultation efforts remain on-going with respect to the application for a *Fisheries Act* authorization that has been made to the Department for the construction of the main civil works and operations of the facility.



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-221	BY / DE M. Donnelly (Port Moody-Coquitlam)	DATE Le 11 mai 2016
---	---	------------------------

Reply by the Minister of Fisheries, Oceans and the Canadian Coast Guard
Réponse du ministre des Pêches, des Océans et de la Garde Côtière canadienne

Honorable Dominic LeBlanc

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

En ce qui concerne le ministère des Pêches et des Océans (MPO) et la construction du barrage hydroélectrique du Site C dans le nord-est de la Colombie-Britannique : a) combien de membres du personnel du MPO sont chargés de surveiller la conformité du projet aux mesures de protection de l'habitat du poisson; b) combien de surveillants environnementaux indépendants sont chargés d'assurer la conformité du projet aux mesures de protection de l'habitat; c) combien d'inspections le MPO a-t-il effectuées sur place depuis le début de la construction et quand a-t-il mené ces inspections; d) combien d'inspections les surveillants environnementaux indépendants ont-ils effectuées sur place et quand ont-ils mené ces inspections; f) le Ministère a-t-il consulté les Premières Nations locales pour déterminer l'incidence du projet sur leurs droits de pêche?

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL

☐

TRANSLATION
TRADUCTION

☒

- a) Quatre membres du personnel de Pêches et Océans Canada (MPO) ont contribué au contrôle de la conformité du projet aux dispositions sur la protection des pêches de la *Loi sur les pêches*. Trois de ces employés travaillent pour le Programme de protection des pêches, tandis que le quatrième est affecté au Programme de Conservation et Protection. Ils travaillent tous dans la Région du Pacifique. L'Agence canadienne d'évaluation environnementale et le Bureau d'évaluation environnementale de la C.-B. effectuent eux aussi un suivi périodique de la conformité aux conditions contraignantes des évaluations environnementales fédérales et provinciales.
- b) Le MPO ne fait pas appel à des contrôleurs environnementaux indépendants pour assurer la surveillance de la conformité des projets aux dispositions sur la protection des pêches de la *Loi sur les pêches*. Le recours aux services d'un contrôleur environnemental indépendant est une exigence du certificat d'évaluation environnementale délivré par la C.-B. pour le projet. C'est le Bureau d'évaluation environnementale de la C.-B. qui détermine le nombre de contrôleurs environnementaux indépendants requis, et le MPO n'a pas accès à cette information.

... /2

- 2 -

- c) Quatre inspections ont été menées sur place depuis que le MPO a autorisé, en vertu de la *Loi sur les pêches*, le début des travaux de préparation du site pour le projet, le 30 septembre 2015. Ces visites de sites ont été effectuées par des employés du Programme de protection des pêches les 26 et 27 novembre 2015 et le 30 mars 2016, et des employés du Programme de Conservation et Protection du MPO ont mené une inspection le 28 octobre 2015.
- d) On ignore combien d'inspections sur place ont été réalisées par des contrôleurs environnementaux indépendants depuis le début des travaux de construction. Le MPO n'a pas accès à cette information puisque l'embauche d'un contrôleur environnemental indépendant est une condition d'obtention du certificat d'évaluation environnementale provincial pour le projet, et que la fréquence des inspections est déterminée par le Bureau d'évaluation environnementale de la Colombie-Britannique.
- e) Oui, le Ministère a consulté les Premières Nations locales au sujet des incidences potentielles du projet sur leurs droits ancestraux et issus de traités, notamment leurs droits de pêche, et il continue de le faire. Les consultations ont eu lieu pendant le processus d'évaluation environnementale du projet et, plus récemment, pendant l'étude des approbations réglementaires du projet. Des consultations sont toujours en cours pour ce qui est de la demande d'autorisation en vertu de la *Loi sur les pêches* présentée au Ministère pour les travaux de génie civil et l'exploitation de l'installation.

Name of organization
Fisheries and Oceans Canada

COST OF MINISTERIAL RESPONSE TO WRITTEN QUESTION, Q- 221	
Name of Parliamentarian : Mr. Donnelly	Constituency : Port Moody-Coquitlam
Date of Inquiry: May 11, 2016	
TOTAL COST: \$ 362.85	

METHODOLOGY

Organizations are to calculate the total cost of producing each response based on the rate of \$60.00 an hour and \$0.39 a word for translation. The translation cost must be included in the calculation.

.....

Nom de l'organisation
Pêches et Océans Canada

COÛT DE PRODUCTION POUR LA QUESTION ÉCRITE, Q- 221	
Nom du parlementaire: M. Donnelly	Circonscription : Port Moody-Coquitlam
Date de la demande: 11 mai 2016	
COÛT TOTAL: \$ 362.85	

Cost Breakdown

Number of hours

- Pacific 2 hours

- NHQ 2 hours

Total 4 hours at \$60/hour = 240\$

Translation

- \$0.39 per word

- 315 words (draft response only – does not include what was already translated)

Total for translation = 122.85\$

TOTAL ESTIMATED COST = \$240 +122.85 = \$362.85



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CLASSIFICATION
CCGMS # 2016-009-00581
EKME # 3625319

To: Leslie MacLean
Pour:

Date: May 13, 2016

Object: **RESPONSE TO MINISTERIAL ENQUIRY Q221 ON SITE C PROJECT**
Objet:

From / De: Nicholas Winfield, A/ DG, Ecosystems Management

Via: Phillipe Morel, ADM, Ecosystems and Fisheries Management

Kevin Stringer, Senior Assistant Deputy Minister, EFM

Additional approvals:
Autre(s) approbation(s):

☒ Your Signature
Votre signature

☐ Information

☐ For Comments
Observations

☐ Material for the Minister
Documents pour le Ministre

Remarks:
Remarques:

DISTRIBUTION

E. Chernoff (613-993-7361) / T. Gordanier / gb

**Pages 43 to / à 45
are duplicates of
sont des duplicatas des
pages 31 to / à 33**

Page 46
is a duplicate of
est un duplicata de la
page 33

Name of organization
Fisheries and Oceans Canada including the Canadian Coast Guard

STATEMENT OF COMPLETENESS

RESPONSE TO WRITTEN QUESTION, Q- 221

Name of Parliamentarian : **Mr. Donnelly** Constituency : **Port Moody-Coquitlam**

Date of Inquiry: **May 11, 2016**

A) 1. Briefly describe records, analysis and consultations on which the proposed response is based:

Fisheries Protection staff in the Pacific region and DFO's Conservation and Protection Program were consulted in the compilation of this information. The proposed response is based on Fisheries and Oceans reviews pursuant to the fisheries protection provisions of the *Fisheries Act*.

Lead official: Nick Winfield, A/DG, Ecosystems Management

2. Were publicly available documents used to draft the response?

Yes

No

If yes, please list titles and dates below:

☐☒

For the purposes of this response, DFO relied on its internal records and consultations with Fisheries Protection staff in the Pacific region and DFO's Conservation and Protection Program

B) Describe any limitations, considerations and/ or data quality statements that apply to this response:

Yes

No

☐☒

None have been identified.

- C) Have information or documents relevant to this response been disclosed publicly, in any manner (e.g. access to information request or request from the Library of Parliament)? If yes, please identify relevant documents and explain any differences in the proposed response.
- | Yes | N/A |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |

There has been no information relevant to this response disclosed publicly.

Attestation:

As the Designated Senior Official for **Fisheries and Oceans Canada**
I attest that the information contained in the proposed response Q-221, based on the records and limitations described in this Statement of Completeness, is accurate and as complete as possible.

Signature

Date

Leslie MacLean

A/Deputy Minister

Name of Designated Senior Official

Title

**Pages 49 to / à 51
are duplicates of
sont des duplicatas des
pages 38 to / à 40**

Desantis, Edward

From: Gordanier, Tania s.21(1)(b)
Sent: Friday, June 3, 2016 4:16 PM s.23
To: Sladic, Ramona; Massicotte, Claude
Cc: Crance, Colin; Chernoff, Eric
Subject: [REDACTED]

Attachments: [REDACTED]

Ramona & Claude,

[REDACTED]

I'm off on language training for a few weeks as of Monday but Eric will remain on the file and Colin will be acting for much of my absence.

Talk to you soon,

Tania


Tania Gordanier
A/Manager, Contaminated Sites & Major Project Coordination
Fisheries and Oceans Canada
(613) 990-8850 | facsimile / télécopieur 613-990-4810
Fisheries and Oceans Canada / Pêches et Océans Canada
200 Kent Street / 200 rue Kent, Mailstop 8E240
Ottawa, Ontario
K1A 0E6

**Pages 53 to / à 55
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Desantis, Edward

From: Gordanier, Tania
Sent: Friday, June 3, 2016 4:11 PM
To: Fanos, Brad
Cc: Chernoff, Eric; Crance, Colin
Subject: 

Attachments: 

Brad,



Thanks Brad, talk to you soon.

Tania

Tania Gordanier
A/Manager, Contaminated Sites & Major Project Coordination
Fisheries and Oceans Canada
(613) 990-8850 | facsimile / télécopieur 613-990-4810
Fisheries and Oceans Canada / Pêches et Océans Canada
200 Kent Street / 200 rue Kent, Mailstop 8E240
Ottawa, Ontario
K1A 0E6

**Pages 57 to / à 59
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

SOLICITOR-CLIENT PRIVILEGE / SECRET

2016-009-00627

To: Leslie MacLean
Pour:

Date:

Subject: **SCENARIO NOTE FOR MEETING WITH WEST MOBERLY AND PROPHET
RIVER FIRST NATIONS ON SITE C**

From / De: Nicholas Winfield, A/Director General, EM

Approved

JUN 08 2016

Via: Stephen Sharzer, Senior General Counsel, Department of Justice

Kevin Stringer, Senior Assistant Deputy Minister, EFM

Phillipe Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /

Autre(s) approbation(s):

<input type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input checked="" type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:

Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: E. Chernoff (613-993-7361) / T. Gordanier / C. Hilt / N. Winfield / gb



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**MEETING WITH WEST MOBERLY AND PROPHET RIVER FIRST NATIONS
ABOUT SITE C
(FOR INFORMATION)**

SUMMARY

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project") in British Columbia.

The Chiefs will likely want to discuss your predecessor's recent response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

The meeting is scheduled for June 13, 2016 from 10:00 to 10:30.

The Honourable Marc Garneau, Minister of Transport may also attend. Philippe Morel, Assistant Deputy Minister, Ecosystems and Fisheries Management and legal counsel will accompany you to this meeting.

Scenario note and suggested messages are attached (**Tab 1**). Relevant correspondence is also provided and includes: a March 9, 2016 letter from the West Moberly and Prophet River First Nations (**Tab 2**) and the responses provided by the Minister of Environment and Climate Change Canada (**Tab 3**) and the former Minister of Fisheries, Oceans and the Canadian Coast Guard (**Tab 4**).

Additional background information on the Project is also provided in **Tab5**.

Leslie MacLean
A/ Deputy Minister

Attachments (5):

Scenario Note

Letter from West Moberly and Prophet River First Nations dated March 9, 2016

Letter from Environmental and Climate Change Canada dated April 4, 2016

Letter from DFO dated May 20, 2016

Background Information on Site C Project

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations on June 13, 2016

Overview

You will meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's recent response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with *CEAA 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A hearing date has been set for September 14, 2016 in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g. construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

In a March 2016 letter to the Minister of ECC and copied to DFO (Tab 2), the First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their

concerns. The Minister of ECC responded to this letter on April 4, 2016 (**Tab 3**) to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response.

A response letter (**Tab 4**) was sent on May 20, 2016, from the your predecessor indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. Transport Canada staff are attempting to see if their Minister might be available for the June 13 meeting as well because that Department is currently in receipt of an application for a federal permit under the *Navigation Protection Act*.

DFO staff continue to attempt to arrange working-level meetings with the West Moberly and Prophet River First Nations on the current *Fisheries Act* application, and after several attempts in recent months DFO staff have been successful at securing a meeting time on June 17, 2016.

Objectives

Your overall objectives for the meeting are: to re-iterate that the Department will continue consideration of the current *Fisheries Act* application for the Project; to express the Department's continued and strong desire to consult with them on the current *Fisheries Act* application; and to communicate the Department's commitment to a timely review of the current application.

Key Messages

- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the project. However, as this issue is currently before the Federal Court of Appeal, I am willing to listen to your concerns, but I am not in a position to discuss this matter further.**
- **As was noted by my predecessor in his May 20, 2016 letter to you, we intend to continue consideration of the *Fisheries Act* application for authorization that is currently before us as per the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*.**
- **We are committed to the government's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and are very interested in obtaining your views on the current *Fisheries Act* application.**
- **It is very important that if you plan to provide your views on the current *Fisheries Act* application that we obtain these views in the very near future.**
- **My Department is committed to ensuring the impacts of the Project to fish and fish habitat are fully considered and addressed to the extent possible, through the implementation of mitigation, offsetting and monitoring programs.**

FOR ACTION/REVIEW

DATE MATERIAL PROVIDED TO MO:

Monday June 13, 2016

DEADLINE FOR FINAL SUBMISSION TO PCO: Monday June 20, 2016

DOCUMENTATION ENCLOSED:


2016-009-00581

Tabled by: Mr. Donnelly

Subject: Q-221


INFORMATION REGARDING MATERIAL

Submitted by:

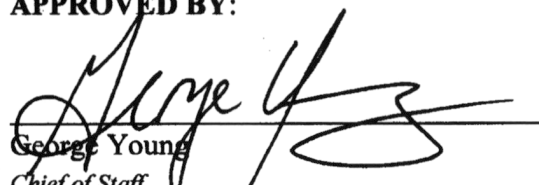
for 
Joanne Denis (N112)
Parliamentary Affairs Analyst
996-0552 (Intercom 41)

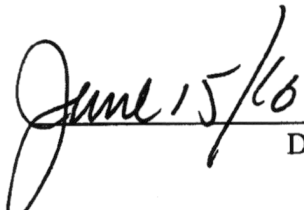
APPROVED BY:


Sharon Ashley


Date

APPROVED BY:


George Young
Chief of Staff


Date

Fisheries and Oceans Canada

Pêches et Océans Canada

Departmental Liaison



Liaison ministérielle

TRANSMITTAL SLIP
Parliamentary Returns

-
-

FICHE D'ACHEMINEMENT
Documents Parlementaires

Inquiry # : Q-221
Demande de renseignements # :

	Name – Nom	Date	Tel. No. – Téléphone
Assistant Deputy Minister Sous-Ministre adjointe	Kevin Stringer Philippe Morel ATIP approval <input type="checkbox"/>	June 6 2016	990-9864 993-1914
Departmental Assistant: Adjoint ministerial:	Mark Waddell 		947-4561
Director, ATIP : Directrice, ARPIP :	Caroline Douglas		993-8937
A/Deputy Minister : Sous- ministre pi :	Leslie MacLean 		993-2200

Comments :
Remarques :

**Pages 66 to / à 67
are duplicates of
sont des duplicatas des
pages 47 to / à 48**



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-221	BY / DE Mr. Donnelly (Port Moody-Coquitlam)	DATE May 11, 2016
---	--	----------------------

Reply by the Minister of Fisheries, Oceans and the Canadian Coast Guard
Réponse du ministre des Pêches, des Océans et de la Garde Côtière canadienne

Serge Cormier

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

With regard to the Department of Fisheries and Oceans (DFO) and the construction of the Site C hydroelectric dam in northeastern British Columbia: (a) how many DFO staff members are responsible for monitoring the project's compliance with fish habitat protections; (b) how many independent environmental monitors are responsible for the project's compliance with fish habitat protections; (c) how many onsite DFO inspections have taken place since construction began and when did they take place; (d) how many onsite inspections have independent environmental monitors conducted since construction began and when did they take place; and (f) has the Department consulted with local First Nations to measure the impact of the project on their fishing rights?

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL



TRANSLATION
TRADUCTION



- a) Four staff members from Fisheries and Oceans Canada (DFO) have been involved in monitoring the project's compliance with the fisheries protection provisions of the *Fisheries Act*. This includes three staff from DFO's Fisheries Protection Program and one from DFO's Conservation and Protection Program. The Canadian Environmental Assessment Agency and the BC Environmental Assessment Office are also conducting periodic monitoring for compliance with binding conditions from the federal and provincial environmental assessments.
- b) DFO does not utilize independent environmental monitors to monitor project compliance with the fisheries protection provisions of the *Fisheries Act*. An independent environmental monitor is a requirement of the environmental assessment certificate issued by the province of BC for the project. As a result, the number of independent monitors is determined by the BC Environmental Assessment Office.
- c) Four onsite inspections have taken place since DFO issued the *Fisheries Act* authorization for site preparation works for the project on September 30, 2015. These site visits were conducted by Fisheries Protection Program staff on November 26, 2016, November 27, 2016, and March 30, 2016, and an inspection by DFO's Conservation and Protection Program staff was undertaken on October 28, 2015.

... /2

- 2 -

- d) The requirement for an independent environmental monitor is a condition of the provincial Environmental Assessment Certificate for the project and the frequency of inspections is determined by the British Columbia Environmental Assessment Office.
- f) Yes, the Department has consulted, and continues to consult with local First Nations in relation to the potential impacts of the project. Consultations occurred during the environmental assessment process for the project and more recently during consideration of regulatory approvals for the project. Consultation efforts remain on-going with respect to the application for a *Fisheries Act* authorization that has been made to the Department for the construction of the main civil works and operations of the facility.



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-221	BY / DE M. Donnelly (Port Moody-Coquitlam)	DATE Le 11 mai 2016
--	--	-------------------------------

Reply by the Minister of Fisheries, Oceans and the Canadian Coast Guard
Réponse du ministre des Pêches, des Océans et de la Garde Côtière canadienne

Serge Cormier

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OF PARLIAMENTARY SECRETARY
MINISTRE DU SECRÉTAIRE PARLEMENTAIRE

QUESTION

En ce qui concerne le ministère des Pêches et des Océans (MPO) et la construction du barrage hydroélectrique du Site C dans le nord-est de la Colombie-Britannique : a) combien de membres du personnel du MPO sont chargés de surveiller la conformité du projet aux mesures de protection de l'habitat du poisson; b) combien de surveillants environnementaux indépendants sont chargés d'assurer la conformité du projet aux mesures de protection de l'habitat; c) combien d'inspections le MPO a-t-il effectuées sur place depuis le début de la construction et quand a-t-il mené ces inspections; d) combien d'inspections les surveillants environnementaux indépendants ont-ils effectuées sur place et quand ont-ils mené ces inspections; f) le Ministère a-t-il consulté les Premières Nations locales pour déterminer l'incidence du projet sur leurs droits de pêche?

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL

☐

TRANSLATION
TRADUCTION

☒

- a) Quatre membres du personnel de Pêches et Océans Canada (MPO) ont contribué au contrôle de la conformité du projet aux dispositions sur la protection des pêches de la *Loi sur les pêches*. Trois de ces employés travaillent pour le Programme de protection des pêches, tandis que le quatrième est affecté au Programme de Conservation et Protection. L'Agence canadienne d'évaluation environnementale et le Bureau d'évaluation environnementale de la C.-B. effectuent eux aussi un suivi périodique de la conformité aux conditions contraignantes des évaluations environnementales fédérales et provinciales.
- b) Le MPO ne fait pas appel à des contrôleurs environnementaux indépendants pour assurer la surveillance de la conformité des projets aux dispositions sur la protection des pêches de la *Loi sur les pêches*. Le recours aux services d'un contrôleur environnemental indépendant est une exigence du certificat d'évaluation environnementale délivré par la C.-B. pour le projet. C'est le Bureau d'évaluation environnementale de la C.-B. qui détermine le nombre de contrôleurs environnementaux indépendants requis.
- c) Quatre inspections ont été menées sur place depuis que le MPO a autorisé, en vertu de la *Loi sur les pêches*, le début des travaux de préparation du site pour le projet, le 30 septembre 2015. Ces visites de sites ont été effectuées par des employés du Programme de protection des pêches les 26 et 27 novembre 2015 et le 30 mars 2016, et des employés du Programme de Conservation et Protection du MPO ont mené une inspection le 28 octobre 2015.

... /2

- 2 -

- d) L'embauche d'un contrôleur environnemental indépendant est une condition d'obtention du certificat d'évaluation environnementale provincial pour le projet, et que la fréquence des inspections est déterminée par le Bureau d'évaluation environnementale de la Colombie-Britannique.
- f) Oui, le Ministère a consulté les Premières Nations locales au sujet des incidences potentielles du projet, et il continue de le faire. Les consultations ont eu lieu pendant le processus d'évaluation environnementale du projet et, plus récemment, pendant l'étude des approbations réglementaires du projet. Des consultations sont toujours en cours pour ce qui est de la demande d'autorisation en vertu de la *Loi sur les pêches* présentée au Ministère pour les travaux de génie civil et l'exploitation de l'installation.

From: Fanos, Brad
Sent: June-21-16 4:44 PM
To: Fanos, Brad
Subject: Site C DM Updates - Week of June 13-17 2016.docx
Attachments: Site C DM Updates - Week of June 13-17 2016.docx

SECRET

Site C Clean Energy Project – Project Update (Week of June 13-17, 2016)

Key Timelines:

s.21(1)(b)

In October 2014, the Minister of Environment issued a decision statement for the federal environmental assessment enabling the project to move into the federal authorizations stage.

BC Hydro was issued a *Fisheries Act* authorization on September 30, 2015, to conduct the initial site preparation works associated with the project.

On December 15, 2015, DFO received a second application for a *Fisheries Act* authorization for the main civil works of the project (i.e. construction of the dam, generating station and spillways, and reservoir filling). Operations of the Site C facility are included in the second application, and as a result no further applications for authorizations under the *Fisheries Act* are anticipated.

On January 25, 2016, DFO advised BC Hydro that their application was complete but the 90-day time limit for DFO to make a decision on their application under the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* ceases to apply as Indigenous consultation is required.

The second *Fisheries Act* application is currently under review.

Key Issues:

March 9, 2016 - the Chiefs of the West Moberly and Prophet River First Nations requested that processing and issuance of all federal permit applications for Site C be put on hold until the Federal Court of Appeal decision is made on their legal challenge of the Governor in Council's (GiC) justification decision for the environmental assessment decision. A response letter was sent from the former Minister indicating that DFO will continue consideration of the application before the Department for the Site C project.

May 24, 2016 - A group of approximately 270 Canadian Scholars signed a Statement of Concern regarding Site C. In their statement, they concluded that there are significant concerns related to the Site C approval process. Amongst other things, they are calling upon the government to suspend issuing further permits for the project until an assessment can be completed by the federal government of whether the project unjustifiably infringes First Nation Rights under Treaty 8. They have requested a meeting with DFO's Minister.

May 25, 2016 - A DFO working-level meeting took place with Blueberry River First Nation (BRFN) on May 25, 2016. At the meeting BRFN raised concerns regarding cumulative effects of development projects in BRFN territory, capacity funding concerns related to consultation, concerns related to methylmercury in fish and associated effects on human health, concerns related to monitoring and enforcement, and issues pertaining to impacts on BRFN Treaty rights.

[REDACTED]

[REDACTED]

SECRET

Site C Clean Energy Project – Project Update (Week of June 13-17, 2016)

June 9, 2016 - the Nun wa dee Stewardship Society (representing the West Moberly and Prophet River First Nations) sent DFO a letter proposing a draft Consultation Plan outlining the steps and tasks that would be necessary for DFO to consult with Nun wa dee Stewardship Society.

s.21(1)(a)
s.21(1)(b)

June 2016 - DFO has been advised by BC Hydro that they would like to have the *Fisheries Act* Authorization issued by the end of the month to avoid incurring significant financial losses.

BC Hydro officials continue to meet with senior officials in the Department to obtain status updates on their current application and to ensure the Department is aware of significant financial risks associated with construction delays.

Upcoming weeks - Given the complexities of the issues surrounding First Nations consultations, the timing of a decision on the second *Fisheries Act* application is currently uncertain, but a decision is not likely for several weeks. The Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.

September 14, 2016 - The Prophet River First Nation and West Moberly First Nations appeal will be before the Federal Court of Appeal in Montreal for duration of up to one day.

New this week:

June 13, 2016 - DFO and TC responded to Nun wa dee Stewardship Society that we are not in a position to follow the proposed draft consultation approach as we are now in the advanced stages of drafting a *Fisheries Act* authorization and *Navigation Protection Act* approvals for the project.

June 13, 2016 – Nun wa dee Stewardship Society sent DFO a draft agenda for their upcoming meeting.

June 17, 2016 – After several attempts DFO and TC have been able to arrange a working-level meetings with the West Moberly and Prophet River First Nations on the current *Fisheries Act* and *Navigation Protection Act* applications .



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

SOLICITOR-CLIENT AND LITIGATION PRIVILEGE

2016-009-00627

To: Catherine Blewett
Pour:

Date:

Subject: **SCENARIO NOTE FOR MEETING WITH WEST MOBERLY AND PROPHET
RIVER FIRST NATIONS ON SITE C**

From / De: Nicholas Winfield, A/Director General, EM

JUL 12 2016

Via: Phillipe Morel, Assistant Deputy Minister, EFM Operations

JUL 13 2016

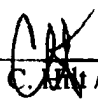
Additional approval(s) /
Autre(s) approbation(s):

Steven Sharzer, Senior General Counsel and Head of Legal Services

<input type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input checked="" type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: E.Chernoff (613-993-7361) / T. Gordanier /  / gb



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

JUL 18 2016

Solicitor-Client and Litigation Privilege

2016-009-00627

MEMORANDUM FOR THE MINISTER

**SCENARIO NOTE FOR THE MINISTER: MEETING WITH
WEST MOBERLY FIRST NATIONS CHIEF WILLSON & PROPHET RIVER
FIRST NATION CHIEF LYNETTE TSAKOZA
(FOR INFORMATION)**

s.19(1)

SUMMARY OF ADVICE TO THE MINISTER

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). A scenario note and suggested messages are attached (**Tab 1**).

The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (**Tab 2**) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease, pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

The meeting is on Monday July 18, 2016 at 3:00 (pacific), at DFO's Vancouver Headquarters (Suite 200 – 401 Burrard Street). Accompanying the Chiefs are legal counsel, [REDACTED] and [REDACTED].

Other relevant correspondence is also provided and includes a letter from the West Moberly and Prophet River First Nations (**Tab 3**), the response provided by the Minister of Environment and Climate Change (**Tab 4**), a letter from Transport Canada (**Tab 5**) and a recent letter from Fisheries and Oceans Canada (**Tab 6**).

Additional background information on the Project is also provided in **Tab 7**.

Catherine Blewett
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachments (7):

- TAB 1 - Scenario Note
- TAB 2 - Letter from Fisheries and Oceans Canada dated May 20, 2016
- TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016
- TAB 4 - Letter from Environment and Climate Change Canada dated April 4, 2016
- TAB 5 - Letter from Transport Canada dated June 18, 2016
- TAB 6 - Letter from Fisheries and Oceans Canada dated July 7, 2016
- TAB 7 - Background Information on Site C Project

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations

s.21(1)(a)

s.21(1)(b)

Overview

You will meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (**Tab 2**) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision. They alleged, among other things, that the information before the GiC could not support a finding of justification, and that the GiC, in determining whether the Project was justified, ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016, in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g., construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application as soon as possible to avoid significant financial risks associated with construction delays.

.../1

Solicitor-Client and Litigation Privilege

DFO is coordinating Indigenous consultations on the current *Fisheries Act* application to the extent possible with Transport Canada, who are currently in receipt of an application for a federal permit for the Project under the *Navigation Protection Act*. The Canadian Environmental Assessment Agency is not involved in consultations with Indigenous groups on federal permitting.

Depending on the outcome of outstanding consultations, DFO may be in a position to make a decision on the current *Fisheries Act* application before Transport Canada makes its decision. Transport Canada and DFO are in agreement with this approach but are attempting to coordinate federal permitting decisions to the extent possible.

In a March 2016 letter to the Minister of Environment and Climate Change and copied to DFO (Tab 3), the First Nations requested that the processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

Minister McKenna met with the Chiefs on March 1, 2016, and as follow-up to that meeting, and by way of response to the First Nations' March 2016 letter, she responded on April 4, 2016, to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response (Tab 4).

A response letter was sent on May 20, 2016, from your predecessor (Tab 2) indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. On June 28, 2016, the Minister of Transport wrote to the Chiefs of the West Moberly and Prophet River First Nations to notify them that Transport Canada will continue to process the *Navigation Protection Act* application for the main civil works of the project (Tab 5).

From December 22, 2015, to present, DFO has conducted First Nations consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

In the case of the Prophet River and West Moberly First Nations, significant and consistent efforts have been made by DFO to arrange a meeting over the past five months through email, letters, phone calls and opportunistic office visits, with very limited return engagement. To date DFO has been successful at securing only one meeting with representatives of the West Moberly and Prophet River First Nations (the Nun wa dee Stewardship Society) on June 17, 2016, to discuss the main civil works application.

A key issue raised at the June 17, 2016, meeting with regional DFO staff was concerning the issuance of a *Fisheries Act* authorization before a Federal Court of Appeal decision on the appeal. It was communicated that the West Moberly and Prophet River First Nations are of the view that Minister Tootoo's May 20, 2016, letter, which states DFO "...will continue

.../2

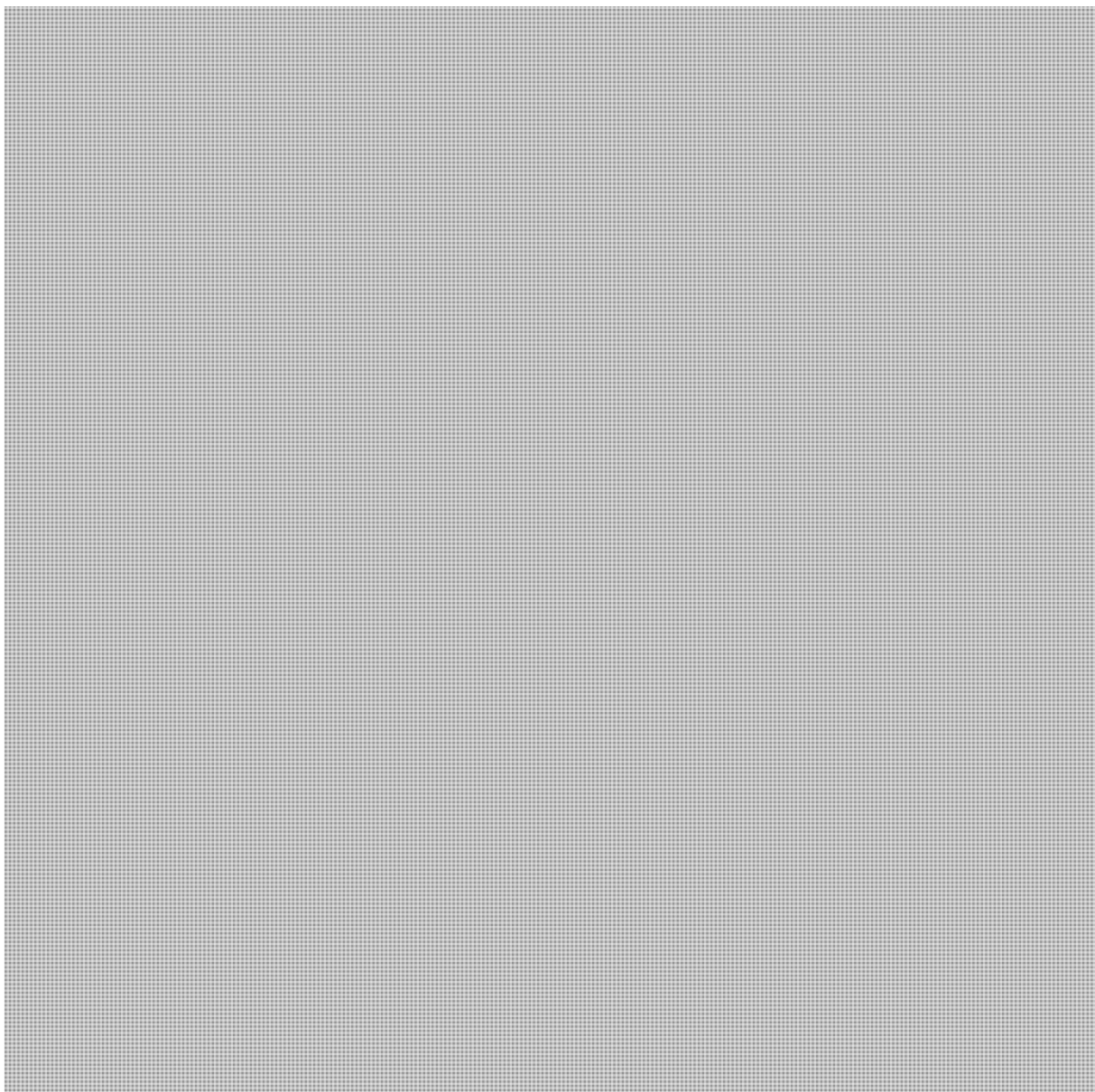
Solicitor-Client and Litigation Privilege

consideration of the *Fisheries Act* authorization application...", suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the Federal Court of Appeal decision.

In a letter following up on the June 17, 2016 meeting (**Tab 6**), DFO clarified that the Department will continue consideration of the *Fisheries Act* application, which includes review of the application, consultation with potentially affected Indigenous groups, and a decision on whether a potential authorization may be issued. The letter (**Tab 6**) also indicated that the Department is in the advanced stages of consideration of the *Fisheries Act* application.

s.21(1)(a)

s.21(1)(b)



.../3

Objectives

Your overall objectives for the meeting are:

- to have an “on the record” conversation;
- to communicate the Department’s commitment to a thorough and timely review of the current application, and;
- to communicate that the appeal hearing date set for September 14, 2016, does not influence DFO’s timing to proceed with making a decision on the current *Fisheries Act* application.

Key Messages

- **The Government is committed to a renewed, nation-to-nation relationship with Indigenous Peoples and my Department is committed to consulting First Nations on major project developments.**
- **I understand my officials have made significant efforts to provide opportunities for input on the current application since December 2015, and it has been a challenge to get together, but I do understand that there have been a number of attempts to seek your views.**
- **I have been informed that you have provided your views on this project and we are carefully considering these as per our letter sent to you on July 7, 2016.**
- **You will appreciate that we also have a responsibility to ensure that the authorization process be completed in a timely way.**
- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the project, and that this issue is currently before the Federal Court of Appeal.**
- **I look forward to hearing your concerns today since they are important for us to reach the completion of our review of the *Fisheries Act* authorization request on this project.**

On delay of our decision until after the September 14, 2016 hearing:

- **You will appreciate that the *Fisheries Act* authorization and the CEAA assessment are two different processes. I hear your concerns and will consider your views with respect to the *Fisheries Act* process.**

.../4

Minister of
Fisheries and Oceans



Ministre des
Pêches et des Océans

MAY 20 2016

Ottawa, Canada K1A 0E6

Chief Roland Willson
West Moberly First Nations

s.19(1)

Chief Lynette Tsakoza
Prophet River First Nation
[REDACTED]

Dear Chiefs Willson and Tsakoza:

I am writing in response to your March 9, 2016 letter regarding the Site C Clean Energy Project (the Project) that was forwarded to me by the Minister of the Environment and Climate Change.

I would be pleased to meet with you, and welcome the opportunity to further discuss your concerns related to the regulatory aspects of the Project. I also understand your desire to have a joint meeting with the Minister of Transport. Please contact Kathy Pinksen from my office at (613) 943-0161 to set up a meeting with myself, and if scheduling permits we will attempt to include my colleague, the Minister of Transport.

I also wish to inform you that my Department will continue consideration of the *Fisheries Act* authorization application submitted by BC Hydro, as per the requirements of the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*. Officials from my Department continue to be available to meet to discuss your concerns with respect to the *Fisheries Act* authorization application, as per the Nun wa dee Stewardship Society's request to meet made to my Department by letter dated March 22, 2016.

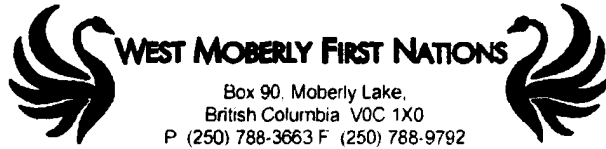
I look forward to meeting.

Yours sincerely,

The Honourable Hunter Tootoo, P.C., M.P.
Minister of Fisheries, Oceans and the Canadian Coast Guard

c.c.: The Right Honourable Justin Trudeau, P.C., M.P.
The Honourable Catherine McKenna, P.C., M.P.
The Honourable Jody Wilson-Raybould, P.C., M.P.
The Honourable Carolyn Bennett, P.C., M.P.
The Honourable Marc Garneau, P.C., M.P.
The Honourable James Gordon Carr, P.C., M.P.

Canada



Prophet River First Nation

PO Box 3250, Fort Nelson
British Columbia V0C 1R0
P (250) 773-6555 F (250) 773-6556

March 9, 2016

The Honourable Catherine McKenna, P.C.,
Minister of Environment and Climate Change
Government of Canada
200 Sacré-Coeur Boulevard
Gatineau, Quebec
K1A 0H3

Dear Minister McKenna, Je aa haanach'e:

RE: Chiefs to Minister Meeting – Site C Project and Treaty rights

Thank you for meeting with us in Vancouver on March 1, 2016 regarding the Site C Project in northeastern British Columbia. As we stated in the meeting, other than our brief meeting with Minister Carr in Ottawa in December 2015, we have never been given the opportunity to meet with federal ministers or federal decision-makers on this Project. We appreciated meeting with you to express our concerns regarding its impacts to the Peace River Valley, our culture, heritage and the practice of our Treaty rights.

We are writing to provide further information regarding the issues discussed at that meeting.

Background

West Moberly and Prophet River First Nations are located in northeastern British Columbia. We are signatories to Treaty No. 8. The rights provided for in Treaty No. 8 are constitutionally recognized and affirmed by section 35 of the *Constitution Act*, 1982.

The Site C Project is the third in a series of dams constructed on the Peace River since the late 1960s. Seventy percent of the Peace River Valley has already been inundated by these previous hydroelectric projects and Site C will flood approximately half of the remaining thirty percent of the Peace River Valley in British Columbia. In addition to the dam itself and associated infrastructure, Site C will create an 83-kilometre long reservoir flooding more than 5550 hectares of land and resulting in a total reservoir surface area of approximately 9330 hectares. It will also flood the lower reaches of the Halfway River, Lynx Creek, Farrell Creek, Cache Creek, Wilder Creek, Tea Creek and the Moberly River.

On October 14, 2014, the former Governor in Council ("GIC") determined that the significant environmental effects of the Site C dam were justified in the circumstances and issued its federal approval under *CEAA, 2012* (the "Justification Decision").

Between February and December 2015, British Columbia Hydro and Power Authority ("BC Hydro") applied to Transport Canada and the Department of Fisheries and Oceans for regulatory approval to carry out certain activities in relation to the construction of the Site C Project. We attach a list of outstanding permit applications to this letter. Both departments issued some permits for work just weeks before the October 2015 federal election and on February 9, 2016 we received notice that Transport Canada would be issuing a new permit notwithstanding our prior requests that processing and issuance of all permit applications be put on hold pending determination by the courts of whether the project unjustifiably infringes our Treaty rights (see letter dated November 24, 2015).

As you know, the legality of the GIC's Justification Decision is presently before the Federal Court of Appeal. The Justification Decision is a pre-condition to the issuance of any federal permits. On February 17, 2016, we filed our Memorandum of Fact and Law in support of our appeal, which asks the Court to send the matter back to the GIC for reconsideration according to the Court's direction; particularly, that that GIC must consider and satisfy itself that its statutory decision would not unjustifiably infringe our Treaty rights.

The Attorney General of Canada, Transport Canada and the Ministries of the Environment and Fisheries and Oceans (collectively, the "AGC") are required to file their Memorandum of Fact and Law on or before **April 4, 2016**.

Meeting on March 1, 2016

In our meeting on March 1, 2016, we asked the federal government to place all federal permit applications and consultation on those permits on hold pending a decision by the Federal Court of Appeal on the legality of the Justification Decision. We also asked the federal government to take no position on our appeal regarding the legality of the Justification Decision.

We believe this request is fully in line with Canada's commitment to establish a new Nation-to-Nation relationship with Indigenous peoples, as set out in mandate letters for the Ministers of Environment and Climate Change, Fisheries, Oceans and the Canadian Coast Guard, Indigenous and Northern Affairs, Justice and Transport Canada. We reiterate our requests and provide further information below.

1. The relevant ministries put processing and issuance of all permit applications, including consultation on those permits, on hold pending a decision by the Federal Court of Appeal

As discussed in our meeting, the Peace River Valley is a unique landscape which contains our preferred cultural, hunting, trapping and fishing sites. As determined by the Joint Review Panel ("JRP"), the Site C project will cause lasting and, in many cases permanent, significant adverse impacts on the use of the Peace River Valley by our members, including our ability to sustain a traditional lifestyle.

Approval of the Site C Project is inconsistent with the honour of the Crown and the objective of reconciliation. The cumulative impacts of this project will have an immitigable effect on our current use of land and resources for traditional purposes, such as hunting, fishing, trapping and cultural use. The GIC gave no reasons why it believed the effects were justified. In proceedings

before the Federal Court. Canada admitted that the GIC did not consider whether the project would be an infringement of Treaty No. 8, despite the fact that both the JRP and the former Minister of the Environment determined that the project would cause significant, adverse environmental effects, including immitigable effects on our use of the land for traditional purposes. We see no prospect of building a positive Nation-to-Nation relationship if Canada is permitted to make decisions of this magnitude without even considering whether those decisions would result in an unjustifiable infringement of our treaty rights.

Our relationship cannot be repaired if Canada continues to issue permits that will allow the destruction of the Peace River Valley when the very decision on which those permits are predicated is before the Court. It is true that the political party that rendered the Justification Decision no longer forms the Government of Canada, but you cannot in good faith hide behind that distinction. Governments change all of the time and they cannot absolve themselves from the consequences of the decisions of their predecessors. This is particularly so when the present government continues to rely on the impugned decision of the former government to exercise its own jurisdiction to issue permits – permits which are wholly in the jurisdiction of the federal government. Is this government suggesting that it is fettered in its decision-making such that it has no choice but to issue the permits? We do not expect so. Proceeding to issue these permits without regard for the constitutionality of the Justification Decision that serves as a pre-condition cannot promote reconciliation.

There is time to allow the Court of Appeal determine whether the underlying justification decision under *CEAA 2012* needs to be reconsidered by this government to address the question of treaty infringement. It is now clear that the hydroelectric energy created by Site C will not be needed until 2029 at the earliest, as confirmed by BC Hydro's most recent projections, attached for your convenience. Further, the JRP considered the Site C Project at a time when there was more of a prospect that there would be a demand for energy to support B.C.'s natural gas strategy. B.C.'s energy exports are declining and the Province is struggling to sell drilling license and parcels of land at its petroleum and natural gas rights tenders.¹ The case for Site C is being challenged by external factors separate and apart from the constitutional questions before the Court and any delay in construction will only shorten the timeframe in which the Province will be required to sell energy at a loss because it's Project has come on line before it is needed. We ask that you consider these factors when determining whether it is honourable or necessary to issue permits on the Site C project pending a hearing and decision from the Federal Court of Appeal on the legality of the Justification Decision.

2. The Government of Canada take “no position” on our appeal of the Justification Decision before the Federal Court of Appeal

The Department of Justice and Attorney General of Canada was given a mandate to review its litigation strategy, including decisions to end appeals or positions not consistent with the new government's commitments, the *Charter* and Canada's values. This mandate would include reviewing positions that are not consistent with the new government's commitments to

¹ “B.C. government records \$0 in oil and gas land sale”. *Business in Vancouver*, published March 1 2016, online <https://www.biv.com/article/2016/3/first-time-history-bc-government-records-0-oil-and/>

Indigenous peoples, as recently stated by the Minister of Justice and Attorney General of Canada at a public event at the University of British Columbia on March 5, 2016.

Canada has not yet filed its written argument in our appeal that is presently before the Federal Court of Appeal. The issue for the Court of Appeal is whether the GIC was required to determine whether Site C would infringe Treaty rights before rendering its Justification Decision under *CEAA 2012*. Canada has admitted that it did not even consider the question of Treaty infringement and that all it considered was whether consultation had been adequate. In the court below, Canada argued that the GIC could make the Justification Decision without considering or determining whether that decision would result in an unjustifiable infringement of our Treaty rights and breach the Treaty and section 35(1) of the *Constitution Act, 1982*. Canada argued that the Crown, in order to act constitutionally in making a Justification Decision under *CEAA 2012*, must only consult with and, if appropriate, accommodate Aboriginal groups.

We believe that adopting this position is not only contrary to developing a Nation-to-Nation relationship with the Aboriginal peoples who entered into historic treaties with the Crown, but is also contrary to domestic constitutional law and international law. If consultation is the only matter to be considered when the Crown seeks to flood half of what is left of a major river valley, proven to be replete with cultural and spiritual sites, and which serves as a sanctuary for the exercise of treaty rights in an area already inundated with natural resource development, when would the important question of whether a proposed "taking up" of land infringes substantive treaty rights ever be addressed? Treaty First Nations would have no ability to prevent the infringement of treaty rights. There would be no check on the Crown's ability to take up land under treaty. The Crown would be entitled to continue to take up land until nothing was left for the exercise of treaty rights because it would never need to consider and determine the issue. That is the effect of a ruling against us on this appeal.

Canada cannot oppose us on this appeal if it acts in accordance with its new mandate to support and advance reconciliation and implement the *UN Declaration on the Rights of Indigenous Peoples*. Opposition on the appeal would also be against the new federal government's mandate to review its laws, policies, and operational practices to ensure that it is fully executing its consultation and accommodation obligations in accordance with its constitutional and international human rights obligations,²² including Aboriginal and treaty rights. Amnesty International intervened in our judicial review before the Federal Court to provide an international human rights law perspective on the issues before the Court and argued that any decision by the Crown that purported to permit an infringement of Indigenous peoples' rights, including a decision under section 52(4) of *CEAA 2012*, must include a rigorous demonstration that the rights-limiting action satisfies the international law standard of justification. Admittedly, the GIC did nothing of the sort in the case of Site C. Amnesty International is now applying for intervenor status in our appeal before the Federal Court of Appeal.

Canada's future legal obligations when it is faced with for decisions under section 52(4) of *CEAA 2012* will be determined by the outcome of this appeal. If it is serious about its new

²² See also the concerns and recommendations contained in the Committee on Economic, Social and Cultural Rights' "Concluding Observations on the Sixth Periodic Report of Canada", dated March 4, 2016, in particular recommendations 5/6, 13/14, 19/20 and 53/54.

relationship with Indigenous peoples. Canada will recognize that it cannot continue to make decisions that authorize potential infringements of Treaty rights without conducting the justification analysis set out by the Supreme Court of Canada in *R. v. Sparrow*. The federal government cannot achieve its stated mandate with respect to Indigenous peoples by taking an adversarial position on this appeal.

s.19(1)

Your government has also stated that it will review *CEAA 2012* and amend it as necessary to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects. While we expect to be meaningfully consulted as part of this review, we can advise you now that amending *CEAA 2012* to ensure that the GIC is required to consider and determine infringement of treaty rights where proposed projects are found to have significant adverse environmental effects, including effects on the use of lands and resources by Aboriginal people that cannot be mitigated, would be a start. We are firmly of the view that this important consideration must be part of the GIC's justification decision, which Canada has admitted it has not done in this case. Accordingly, taking no position on our appeal would be consistent with Canada's mandate to amend *CEAA 2012* to repair a fundamentally flawed and unconstitutional process.

3. Minister McKenna assist us in setting up a meeting as soon as possible with the Ministers of Justice, Transport Canada, Fisheries and Oceans, Natural Resources and Indigenous and Northern Affairs to discuss our requests

We reiterate that we are willing to travel to Ottawa for this meeting to take place. We are willing to accommodate the Ministers' schedules as necessary because meeting to discuss our concerns with the Site C Project is a priority for our First Nations.

In the spirit and intent of Treaty No. 8, we look forward to working with the Government of Canada to address our concerns related to the Site C project. In order to schedule a follow up meeting please contact [REDACTED]

Wuujo aasana laa,



Chief Roland Willson
West Moberly First Nations

Chief Lynette Tsakoza
Prophet River First Nation

Encl.

Cc:

The Right Honourable Justin Trudeau, P.C., M.P. Prime Minister of Canada
The Honourable Jody Wilson-Raybould, P.C. Minister of Justice and Attorney General of Canada
The Honourable Dr. Carolyn Bennett, P.C. Minister of Indigenous and Northern Affairs Canada
The Honourable Marc Garneau, P.C. Minister of Transport
The Honourable Hunter Tootoo, P.C. Minister of Fisheries, Oceans and the Canadian Coast Guard

Minister of the Environment



Ministre de l'Environnement

Ottawa, Canada K1A 0H3

APR - 4 2016

Chief Roland Willson
West Moberly First Nations

s.19(1)

Chief Lynette Tsakoza
Prophet River First Nation
[REDACTED]

Dear Chiefs Willson and Tsakoza:

Thank you for your correspondence of March 9, 2016, concerning the Site C Clean Energy Project (the Project) as well as for taking the time to meet with me in Vancouver on March 1, 2016. Our meeting gave me a much better understanding of your concerns about the Project, and drives home for me the value of direct engagement and conversation with you in rebuilding respectful relationships.

On January 27, 2016, the Government of Canada announced an interim approach that includes principles and plans for major projects. These principles are the first part of a broader strategy to review and restore confidence in Canada's environmental assessment process. These principles are intended to provide greater certainty as to how the Government of Canada will be guided in the application of its discretionary decision-making authorities for projects being assessed during the review of environmental assessment processes:

1. No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and Northern regulatory boards;
2. Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence;
3. The views of the public and affected communities will be sought and considered;
4. Indigenous peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated; and,
5. Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.

Eco-Logo® Paper / Papier Éco-Logo®



.../2

Canada

- 2 -

As you are aware, the Project was reviewed and approved by the previous government.

I am writing to let you know that Canada will be responding to the legal issues that are before the Federal Court of Appeal. I understand your concerns regarding the previous government's decision. It is our hope that the appeal will allow for the clarification of important issues concerning the scope of the Cabinet's authority to make determinations of Aboriginal and Treaty rights in the context of environmental assessments under the *Canadian Environmental Assessment Act, 2012* and the appropriateness of such rights being adjudicated through the judicial review process.

Let me emphasize that the government fully respects your right to raise before the courts your Treaty-protected rights. The only question is whether a summary process like this judicial review, as opposed to an action, allows for the matter to be dealt with on the basis of all of the important evidence and argument they rightly deserve. We will all benefit from the guidance that the Federal Court of Appeal can provide as the result of a full and respectful debate. Canada's position will reflect what was clearly stated in the January 27 announcement on the interim approach.

Legally binding conditions are in place for the Project, which include mitigation measures and follow-up requirements which BC Hydro must comply with throughout the life of the project. The Canadian Environmental Assessment Agency continues to verify compliance with the conditions set out in the decision statement.

Regarding the other requests you made in your letter, I have forwarded your letter to my colleagues, the Ministers of Justice, Transport, Fisheries and Oceans, Natural Resources, and Indigenous and Northern Affairs, for their consideration.

..13

- 3 -

Finally, I want to reiterate the government's commitment to engage in a nation-to-nation relationship with Indigenous people, one that is based on recognition of rights, respect, co-operation and partnership. We look forward to consulting with you, and other Indigenous groups, as we apply the interim guidelines and in developing a new environmental approval process.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. McKenna', followed by a long horizontal line.

The Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change

c.c.: The Right Honourable Justin Trudeau, P.C, M.P.
The Honourable Jody Wilson-Raybould, P.C., M.P.
The Honourable Carolyn Bennett, P.C., M.P.
The Honourable Marc Garneau, P.C., M.P.
The Honourable Hunter Tootoo, P.C., M.P.



Minister of Transport

Ministre des Transports

Ottawa, Canada K1A 0N5

Chief Roland Willson
West Moberly First Nations

JUN 28 2016

Chief Lynette Tsakoza
Prophet River First Nation

Sent via email: [REDACTED]

s.19(1)

Dear Chiefs Willson and Tsakoza:

Further to the letter sent by the Minister of the Environment and Climate Change dated April 4, 2016, I would be pleased to meet with you and welcome the opportunity to further discuss your concerns related to the regulatory aspects of the Site C Clean Energy Project.

As you are aware, Transport Canada officials are continuing to process the applications submitted by BC Hydro as per the requirements of the *Navigation Protection Act* approval process for the main civil works for the Project. I understand that officials met with representatives of the Nun wa dee Stewardship Society on June 17th to discuss the specifics of your concerns as they relate to the approvals requested by BC Hydro. I would be pleased to meet with you personally to further these discussions.

Yours sincerely,

The Honourable Marc Garneau, P.C., M.P.
Minister of Transport

c.c.: Jason Lee, Nun wa dee Stewardship Society
The Right Honourable Justin Trudeau, P.C., M.P.
The Honourable Catherine McKenna, P.C., M.P.
The Honourable Jody Wilson-Raybould, P.C., M.P.
The Honourable Carolyn Bennett, P.C., M.P.
The Honourable Dominic LeBlanc, P.C., M.P.
The Honourable James Gordon Carr, P.C.,

Canada



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Pacific Region
200 – 401 Burrard Street
Vancouver, British Columbia
V6C 3S4

Région du Pacifique
Pièce 200 – 401 rue Burrard
Vancouver (C.-B.C.)
V6C 3S4

July 7, 2016

Your file *Votre référence*
3834

s.19(1)

Our file *Votre référence*
15-HPAC-01160

[REDACTED]
Nun wa dee Stewardship Society
9824 98 A Avenue
Fort St. John, BC
V1J 1S2

Dear [REDACTED]

**Re: Follow-up on our June 17, 2016 meeting regarding DFO's Regulatory Review of
BC Hydro's application regarding the Site C Clean Energy Project Main Civil
Works and Facility Operations**

Thank you for providing us the opportunity to meet with your staff ([REDACTED])
[REDACTED] on June 17, 2016 at the Nun wa dee Stewardship Society Office in Fort St.
John. We found the meeting to be informative and heard from your staff regarding:

- a request for capacity funding to engage in consultation on BC Hydro's Application for a *Fisheries Act* s.35(2)(b) authorization pertaining to the Site C Main Civil Works and Facility Operations ('the Project');
- clarification as to whether there would be a potential moratorium on issuance of regulatory permits associated with the Project, pending a decision by the Federal Court of Appeal on the case brought forward by Prophet River First Nation (PRFN) and West Moberly First Nations (WMFN);
- the importance of having decision-makers present at consultation meetings with the Nun wa dee Stewardship Society;
- development of a consultation plan and process for Fisheries and Oceans Canada (DFO) to engage in consultations with the Nun wa dee Stewardship Society ('the Nun wa dee') on BC Hydro's Application for a *Fisheries Act* s.35(2)(b) authorization ('Application');
- questions related to DFO's regulatory review and Aboriginal consultation process;
and

Canada

- concerns and questions related to ongoing monitoring of compliance for works, undertakings or activities currently underway for the Site C Project.

As we advised your staff and as we have advised in previous correspondence, DFO does not have capacity funding to offer the Nun wa dee at this time, and has instead been making available our technical experts to facilitate your review of BC Hydro's Application. In consultation meetings with other potentially affected Aboriginal groups our staff provided technical expertise on BC Hydro's Application, which these groups found insightful in understanding potential effects on fish and fish habitat in the Peace River watershed.

We were asked to provide clarity on the Minister of Fisheries, Oceans and the Canadian Coast Guard's ('the Minister') May 20, 2016 letter to the Chiefs of PRFN and WMFN regarding their request that DFO cease processing BC Hydro's Application pending a decision by the Federal Court of Appeal. To be clear, DFO's position is that the Department will continue consideration of the Application, which includes review of the Application, consultation with potentially affected Aboriginal groups, and a decision on whether a potential authorization may be issued.

We understand that the Nun wa dee is of the view that it is important to have decision-makers attend consultation meetings. As a general practice, DFO provides staff with technical expertise during consultation meetings to aid Aboriginal groups in understanding the potential effects of proposed works, undertakings or activities described in regulatory applications on their potential or established Aboriginal or Treaty rights. When a specific request is made by an Aboriginal group, we do our best to arrange a meeting with senior officials and/or decision-makers. In this regard, DFO has provided the opportunity for a meeting with the Minister in relation to BC Hydro's Application, and we understand that a meeting with the Chiefs of West Moberly First Nations and Prophet River First Nation is imminent.

As noted in our June 13, 2016 letter to you, while we are appreciative of the time and effort the Nun wa dee has put into drafting the proposed consultation plan (enclosed with your June 9, 2016 letter), we are not in a position to follow the proposed approach, given, as you can see from the chain of correspondence to you from DFO beginning in December 2015, that we are now in more advanced stages of consideration of the Application for a s. 35(2)(b) *Fisheries Act* authorization. We would be happy to refine and discuss the proposed consultation plan given the potential use by DFO and the Nun wa dee of such a plan for future projects and applications.

During the meeting, your staff asked questions about DFO's regulatory review process and requested that DFO provide information regarding our technical review of the Application. We have enclosed this information with this letter for your review.

Your staff also raised questions regarding ongoing monitoring of compliance for works, undertakings or activities currently underway as part of the Site C Project. As we noted during the meeting, a requirement under the BC Environmental Assessment Certificate for the Project is for an Independent Environmental Assessment Monitor (IEM) to be onsite. The IEM reports directly to Environmental Assessment Office (EAO) and the Canadian Environmental Assessment Agency (CEAA). DFO and Transport Canada also routinely conduct compliance monitoring site visits associated with the authorizations and/or permits that each department has issued. Since October 2015, DFO has conducted 4 such site visits.

In follow-up to a request from your staff, DFO sent an e-mail to CEAA and the EAO immediately after our June 17, 2016 meeting requesting that the IEM be sent on site to measure water quality upstream, downstream and in the vicinity of activities currently underway for the Site C Project. A copy of this e-mail and a response from the EAO were provided to your staff and are enclosed with this letter for your reference.

Lastly, during our meeting your staff requested a copy of our December 16, 2015 letter to you along with the enclosed BC Hydro's regulatory application which was provided on a CD. They have also requested copies of our draft Conditions of Authorization, which were provided electronically at the following link: [ftp: ftp1.dfo-mpo.gc.ca BonamisA/Site-C](http://ftp1.dfo-mpo.gc.ca/BonamisA/Site-C). Your staff noted that these documents were not available in their records, and that they are difficult to access online, so we are providing these documents electronically on the enclosed USB drive for your records. Please note that there have been minor updates to the draft Conditions of Authorization which are provided on the USB and accessible at the link above, and we recommend that the enclosed draft Conditions of Authorization be referenced going forward.

Within the draft Conditions of Authorization, DFO has included conditions requiring that BC Hydro maintain fish passage (Condition 2.3) and construct fish habitat offsetting measures (Condition 5.2) to ensure that the productivity of bull trout, rainbow trout, and other fish species of importance to Aboriginal and recreational fisheries is maintained or enhanced post-project construction. Feedback received through consultations with Aboriginal groups to date has helped us further refine the draft Conditions, and incorporate the interests of Aboriginal groups to the extent possible. Should you wish to provide comments on the Draft Conditions of Authorization, we request that these comments be provided no later than July 22, 2016.

Canada

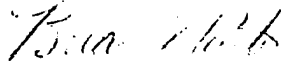
- 4 -

DFO File: 15-HPAC-01160

s.19(1)

Once again thank you for providing us the opportunity to meet with your staff. If you have any questions, please contact Alston Bonamis at 604-340-3359 or at Alston.Bonamis@dfo-mpo.gc.ca. Please refer to the file number referenced above when corresponding with us.

Yours sincerely,



Brian Naito
Senior Fisheries Protection Biologist
Fisheries Protection Program

Attachments:

1. DFO's Review Process for an Application for a *Fisheries Act* s.35(2)(b) authorization
2. DFO's review of BC Hydro's Application for a *Fisheries Act* s.35(2)(b) authorization
3. Copy of DFO's June 17th, 2016 email to CEAA and EAO requesting the IEM be sent onsite, and subsequent response e-mail from EAO.

cc: Chief Willson, West Moberly First Nations
Chief Tsakoza, Prophet River First Nation
Chief Parentau, Salteau First Nation
J. Richert, Nun wa dee Stewardship Society

West Moberly First Nations

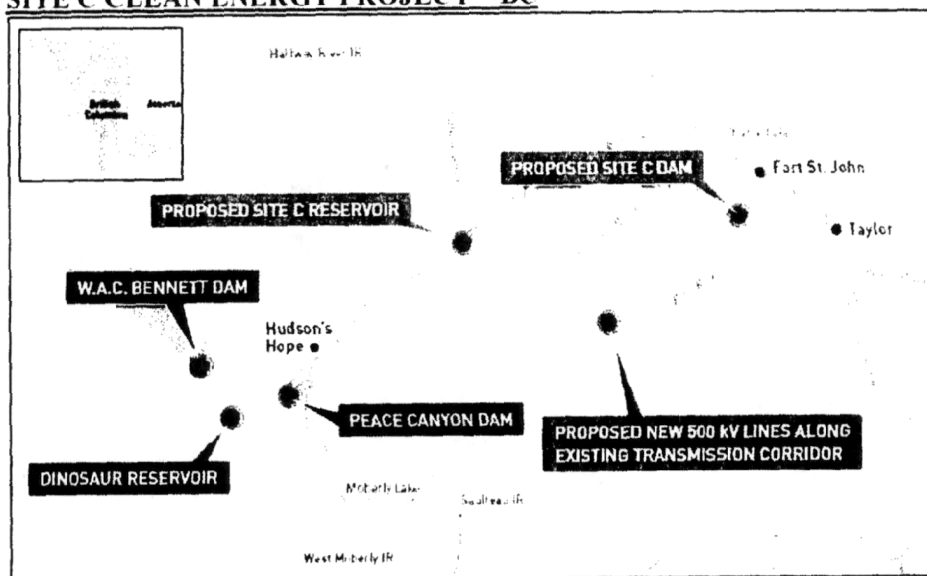
Prophet River First Nation

T. Martin, Transport Canada (tanya.martin@tc.gc.ca)

C. Parkinson, Transport Canada (colin.parkinson@tc.gc.ca)

Canada

SITE C CLEAN ENERGY PROJECT - BC



Background

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project) - the third hydroelectric dam in a series of dams on the Peace River in northeast BC. The project is estimated to have a capital cost of \$8.3 billion and create approximately 8,000 person-years of employment. The proponent also contends that the project will provide clean, reliable and affordable electricity for 450,000 homes per year for more than 100 years.

As proposed, the project will be an earth fill dam, approximately 1,050 metres in length, and 60 metres high above Peace River. Reservoir creation will result in 83 kilometres of the Peace River being flooded to two to three times the current width.

A Canada-British Columbia joint review panel (the Panel) concluded that the project would result in significant adverse environmental effects including significant cumulative effects on Aboriginal peoples and Treaty rights, and to fish and fish habitat which cannot be mitigated. Governor in Council (GiC) determined that the environmental effects are justified and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which the proponent must legally comply.

On September 30, 2015, Fisheries and Oceans Canada (DFO) issued a *Fisheries Act* authorization for site preparation works. Potentially affected Aboriginal groups were consulted on the proposed works and offsetting plan. On December 15, 2015, the proponent submitted a second application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for project operations. This application is under review by DFO. The 90 day time limit is on hold during indigenous consultation.

DFO has been advised by the proponent that they would like to have the *Fisheries Act* authorization issued as soon as possible to avoid significant financial risks associated with construction delays.

Fisheries Impacts

Impacts on fish and fish habitat in the Peace River are anticipated to result from the construction the main civil works, creation of the project reservoir, and from impaired upstream fish passage due to the dam. Fish entrainment during operation may also result in an ongoing effect on fisheries productivity in the Peace River.

Flooding for reservoir creation will permanently alter existing riverine aquatic ecosystem, resulting in a large oligotrophic reservoir that may reduce abundances of some fish species (e.g., Arctic grayling and mountain whitefish) and increase abundances of other species (e.g., lake whitefish and kokanee). It is uncertain if the proponent's prediction of a significant increase in mountain whitefish abundance and expansion in the range of some salmonid species (e.g., Arctic grayling and bull trout) downstream will occur.

Mitigation & Offsetting

The proponent has proposed standard avoidance and mitigation measures (e.g., fish salvage and isolation, erosion and sediment control, etc.) for construction activities associated with the main civil works.

To offset effects associated with the construction footprint and reservoir filling, the proponent has proposed to conduct: excavation and shoreline contouring to reduce fish stranding and enhance fish habitat; side-channel habitat enhancement downstream of the dam site; reservoir shoreline enhancement to create shallow water littoral habitats; and reservoir shoreline riparian planting. The proponent has also proposed an adaptive management approach as part of its Fisheries and Aquatic Habitat Monitoring and Follow-up Program to support future mitigation and offsetting options after reservoir creation based on follow-up monitoring.

Indigenous Consultation

In August 2015, the Federal Court dismissed an application for judicial review of the decision of the GiC from the Prophet River First Nation and West Moberly First Nation. In September 2015, these groups appealed the Federal Court decision to the Federal Court of Appeal. The appeal will be before the Federal Court of Appeal on September 14, 2016 for one day.

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to the Prime Minister and other cabinet ministers (including the Minister of Fisheries, Oceans and the Canadian Coast Guard) requesting a review of the federal decision to approve the project. The Nations have asked the Government to work with them to establish a comprehensive framework for engagement on major development projects.

In a letter dated March 9, 2016, the West Moberly and Prophet River First Nations requested that a Ministerial-level meeting be set-up in Ottawa and that processing and issuance of all federal permit applications for Site C be put on hold until a Federal Court of Appeal decision is made on their legal challenge of the conclusion of the environmental assessment. A response was sent on May 20, 2016 by the former Minister of DFO indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C project.

The proponent is engaged in ongoing consultation with Indigenous groups related to construction and operation of the Site C dam, and is working with groups to develop impact benefit agreements.

SECRET

Monitoring & Enforcement

On October 20, 2015, the proponent became aware that the construction of a causeway in the Peace River was being constructed in a different location than authorized by DFO. The proponent ceased further work on the causeway. On December 16, 2015, DFO issued a warning letter to the proponent advising them that the causeway construction works in the Peace River resulted in a failure to comply with the conditions of their authorization. DFO is continuing to monitor this project to ensure compliance with the authorization.

On April 7, 2016, the BC Environmental Assessment Office issued an unrelated Enforcement Order under the BC *Environmental Assessment Act* to BC Hydro for non-compliance with the Environmental Assessment Certificate, requiring immediate measures to control construction runoff and sediment.

Strategic Considerations, Key Issues & Next Steps

DFO is currently reviewing an application for a *Fisheries Act* Authorization for project components related to construction of the main civil works and for project operations.

Given the complexities of the issues surrounding Indigenous consultation, the timing of a decision of the second *Fisheries Act* application is currently uncertain, but a decision is not likely for several weeks. The Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.

From: Massicotte, Claude
Sent: Monday, July 25, 2016 4:32 PM
To: Reid, Rebecca; Webb, Cheryl; Fanos, Brad
Cc: Sladic, Ramona; Hopkins, Lillian; Butcher, Ashley; Massicotte, Claude
Subject: [REDACTED]
Attachments: [REDACTED]

s.21(1)(b)

s.23

Protected Solicitor/Client Privilege
Protégé Secret Professionnel de l'Avocat

Claude Massicotte
Avocat-conseil/Senior Counsel
Justice Canada
Services juridiques P&O/F&O Legal Services
200 Kent
8^{ième} étage/8th floor (8S003)
Ottawa, Ontario
K1A 0E6
613-990-8548 (office/bureau)
613-889-2655 (cell)

**Pages 99 to / à 124
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Desantis, Edward

From: Chernoff, Eric
Sent: Monday, July 25, 2016 12:04 PM
To: Fanos, Brad; Webb, Cheryl
Cc: Winfield, Nicholas; Hilt, Caroline; Gordanier, Tania
Subject: Site C Memo to Minister
Attachments: Memo to Minister Site_C_Update Main Civil Works Application.doc

As requested,

Eric

Eric Chernoff
613-993-7361



Deputy Minister

Sous-ministre

SECRET
2016-xxx-xxxxx

MEMORANDUM FOR THE MINISTER

**SITE C CLEAN ENERGY PROJECT – FISHERIES ACT S.35(2)(B) AUTHORIZATION
FOR MAIN CIVIL WORKS AND OPERATIONS**
(For Information)

s.21(1)(b)

s.23

SUMMARY OF ADVICE TO MINISTER

The Site C Clean Energy Project, a proposal to construct a third hydroelectric dam and generating station on the Peace River in northeastern B.C., received environmental approvals to proceed from the provincial and federal governments in October 2014.

The British Columbia Hydro and Power Authority (BC Hydro, the Proponent) applied for a *Fisheries Act* authorization to conduct the main civil works of the project (i.e. construction of the dam, generating station and spillways, and reservoir filling). Operations of the Site C facility are included in the application, and as a result no further applications for authorizations under the *Fisheries Act* are anticipated.

Until recently, the 90 day time-limit for DFO to make a decision on the application under the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* ceased to apply as Indigenous consultation was required.

The Proponent intends to commence works as soon as possible. With consultation and technical requirements complete, the Department will proceed with issuance of a *Fisheries Act* authorization for the main civil works and operations. Authority to issue the s. 35 (2)(b) *Fisheries Act* authorization is delegated to the Regional Director General.

BACKGROUND

The Site C Clean Energy Project ('the Project') is a proposal to construct and operate a third dam and hydroelectric generating station on the Peace River in northeast B.C. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations, and that these effects cannot be mitigated.

The Governor in Council subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally-binding conditions.

s.21(1)(b)
s.23

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project.

BC Hydro subsequently applied for a *Fisheries Act* authorization for the main civil works and operations of the Project, and the Department after reviewing the Proponent's application determined that serious harm to fish is likely, and a *Fisheries Act* authorization would therefore be required.

Following this determination, the Department conducted consultation with affected Indigenous groups on the proposed works, and mitigation and offsetting measures. Until recently, the 90-day regulatory time limit associated with making a determination on issuance of an authorization was not initiated because consultations with Indigenous groups were required.

With consultation and technical requirements completed, the Department is now in a position to issue an authorization for the main civil works and operations.

BC Hydro has requested that DFO make a decision on the current *Fisheries Act* application for main civil works and operations as soon as possible to avoid significant financial risks associated with construction delays.

STRATEGIC CONSIDERATIONS: POLICY DEVELOPMENT

It is DFO's view that the project will meet the goal "... to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries" as set out in the *Fisheries Protection Policy Statement 2013*.

The Project will result in ecosystem level impacts in the Peace River watershed, and there is uncertainty in the predicted response of the aquatic ecosystem in relation to potential serious harm, offsetting outcomes, and the achievement of fisheries management objectives.

To manage for these uncertainties, the Proponent is implementing an adaptive management and monitoring program, with the goal of informing decisions on the appropriateness and effectiveness of mitigation and offsetting measures and opportunities for contingency offsetting measures as appropriate.

Over the 10 year period after project completion, the project is predicted to result in increased biomass for some fish species (e.g., Bull Trout, Kokanee, Rainbow Trout and Lake Trout) and decreased biomass for other fish species (e.g., Mountain Whitefish, Arctic Grayling and

Walleye). Overall, while the fish community composition will change, fish biomass is predicted to increase post-project, resulting in overall increased productivity for recreational and aboriginal fisheries.

Indigenous groups have previously filed injunction applications against provincial permits, and it is possible that federal permits (including DFO's authorization) will face similar circumstances.

INTRADEPARTMENTAL CONSULTATIONS

Fisheries Protection Program staff in National Headquarters were consulted in the development of this memorandum.

INTERDEPARTMENTAL CONSULTATIONS

DFO coordinated Indigenous consultations on the current *Fisheries Act* application to the extent possible with Transport Canada, who are currently in receipt of an application for a federal permit for the Project under the *Navigation Protection Act*.

DFO and Transport Canada have also been sharing information with the Canadian Environmental Assessment Agency and the Major Projects Management Office and have been receiving support from the Department of Justice.

ADVICE AND RECOMMENDATIONS TO DEPUTY MINISTER

DFO has received the necessary information to support the issuance of a *Fisheries Act* authorization and Crown consultation has been deemed adequate. Therefore, DFO is now in a position to issue an authorization for the Site C main civil works and operations.

It is anticipated that the *Fisheries Act* authorization for the main civil works and operations will be issued by the Regional Director General prior to Month/Day/Year.

Catherine Blewett
Deputy Minister

Webb, Cheryl

From: Fanos, Brad
Sent: Wednesday, July 27, 2016 7:06 PM
To: Reid, Rebecca
Cc: Webb, Cheryl
Subject: Key Site C docs
Attachments: 2016-07-27_BN for Site C Authorization decision Final.doc; 2016-07-27_Site_C_MCW_& Facility_Operations_Letter_P_Authorization_Cover_Letter_Final.doc; 2016-07-27_Site_C_MCW_s 35(2)(b) FAA_FINAL.docx; 2016-07-27_Site_C_90-day_Time_Limit_Resume_Letter_M.doc; 2017-07-27 DFO Letter to Nun wa dee.pdf

Here are the key documents for your calls

Authorization
Briefing note
Letter P- authorization cover
Start clock letter
Nun wa dee letter

Brad Fanos

Regulatory Reviews Manager, Fisheries Protection Program
Ecosystem Management Branch
Fisheries and Oceans Canada / Government of Canada
brad.fanos@dfo-mpo.gc.ca / Tel: 604-666-3909 / Cell: 604 789 3201

Programme de la protection des pêches
Direction des écosystèmes
Pêches et Océans Canada / Gouvernement du Canada
brad.fanos@dfo-mpo.gc.ca / Tel: 604-666-3909

From: Webb, Cheryl
Sent: July-27-16 6:50 PM
To: Fanos, Brad
Subject: Final BN

Cheryl Webb

Regional Director
Ecosystems Management Branch
Fisheries and Oceans Canada / Government of Canada
cheryl.webb@dfo-mpo.gc.ca / Tel: 604-666-6532

Directrice régionale
Direction des écosystèmes
Pêches et Océans Canada / Gouvernement du Canada
cheryl.webb@dfo-mpo.gc.ca / Tél: 604-666-6532



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Regional Director,
Ecosystems Management Branch
Pacific Region

Directrice régionale
Direction des écosystèmes
Région du Pacifique

UNCLASSIFIED

2016-XXX-00XXX
EKME #: XXXXXXXX

MEMORANDUM FOR THE REGIONAL DIRECTOR GENERAL

**SITE C CLEAN ENERGY PROJECT
DECISION TO ISSUE *FISHERIES ACT*, PARAGRAPH 35(2)(b) AUTHORIZATION
FOR
SITE C MAIN CIVIL WORKS AND FACILITY OPERATIONS
(FOR DECISION)**

s.21(1)(b)

SUMMARY

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project), the third hydroelectric dam in a series of dams on the Peace River in northeast BC.

In October 2014, the federal Minister of Environment issued a Decision Statement for the federal environmental assessment with legally binding conditions enabling the Project to proceed to the regulatory permitting stage. In September 2015, the Proponent initiated site preparation construction activities for the Project after receiving a *Fisheries Act* authorization for specific site preparation works, activities and undertakings.

On December 15, 2015, the Proponent submitted to Fisheries and Oceans Canada (DFO) a second Application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for facility operations.

DFO initiated a regulatory review of the second Application pursuant to the *Application for Authorization under Paragraph 35(2)(b) of Fisheries Act Regulations* and consistent with existing Fisheries Protection Program policies and operational procedures, including conduct of Aboriginal consultations and the consideration of the factors set out in *Fisheries Act* Section 6.

Over a 7 month period, DFO conducted consultations with potentially affected Indigenous groups, making meaningful efforts to provide opportunities for input on the current application and responding to all Indigenous groups that have provided comments. In consideration of the efforts made to engage Indigenous groups, the Department's responses to the issues raised by the groups, [REDACTED] the

Department is concluding consultation for the purpose of making a regulatory decision. The Department has coordinated with Transport Canada during federal Aboriginal consultation activities and is working with Transport Canada to coordinate timing, legal advice and media lines on the issuance of our respective authorization/approvals. DFO has also considered consultation and accommodation efforts made by the province during the water licence application review, and information provided by BC Hydro in relation to their consultation and accommodation efforts.

A decision whether to issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act* is required. Given the closure of consultation, and the conclusion of DFO's review of the application, it is recommended that the Regional Director General issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act*.

DECISION RATIONALE

The Project:

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project) - the third hydroelectric dam in a series of dams on the Peace River in northeast BC. The Project is estimated to have a capital cost of \$8.3 billion and create approximately 8,000 person-years of employment. The Proponent also contends that the Project will provide clean, reliable and affordable electricity for 450,000 homes per year for more than 100 years. As proposed, the Project will be an earth fill dam, approximately 1,050 metres in length, and 60 metres high above Peace River. Reservoir creation will result in approximately 83 kilometres of the Peace River being flooded to two to three times the current width.

Environmental Assessment:

A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*.

DFO provided advice in the environmental assessment (EA) on project impacts to fish and fish habitat of the Peace River. DFO Science Branch was engaged to provide advice which resulted in two Canadian Science Advisory Secretariat (CSAS) Science Responses, one that reviewed the downstream boundary for project fish and fish habitat effects and the other providing a technical review of project effect to fish and fish habitat in the Peace River.

The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for First Nations represented by the Treaty 8 Tribal Association and that these effects cannot be mitigated (**Attachment 1**). The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances.

In October 2014, the federal Minister of Environment issued a Decision Statement with legally binding conditions (**Attachment 2**). The Canadian Environmental Assessment Agency is responsible for monitoring the compliance of BC Hydro with the Decision Statement conditions.

.../3

In November 2014, West Moberly First Nations, Prophet River First Nation and Doig River First Nation filed an application for judicial review in Federal Court challenging the Minister of the Environment's Decision Statement and the GiC's justification decision (the Doig River First Nation eventually withdrew). In August 2015, the Federal Court dismissed the application for judicial review on the basis that the Crown had met its duty to consult and accommodate and that, having met this duty, there was no requirement on the part of the Governor in Council to determine if the Project unjustifiably infringes their section 35 treaty rights. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal and a one-day hearing has been set for September 14, 2016 in Montreal. The focus of the appeal is to determine if the Applications Judge was correct in concluding that the Governor in Council was not required to determine the infringement of the Appellants' treaty rights in making its decision pursuant to s. 52(4) of *CEAA 2012*.

Regulatory Review Process:

On September 30, 2015, Fisheries and Oceans Canada (DFO) issued a *Fisheries Act* authorization to BC Hydro for the site preparation works for the Project.

On December 15, 2015, BC Hydro submitted a second Application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for facility operations. The *Application for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*, defines the application process, information requirements and timelines for making decisions.

On January 25, 2016, the Application was deemed complete. However, the 90-day regulated time limit within which a decision must be made on the application ceased to apply under paragraph (8)(1)(d) *Application for Authorization under Paragraph 35 (2) (b) of the Fisheries Act Regulations*, as Aboriginal consultations are required before a decision is made. Concurrent with the Aboriginal consultation activities, the Department continued its review of the application following existing Fisheries Protection Program policies and operational procedures.

The Site C Application for Authorization for construction of the main civil works and for facility operations was reviewed thoroughly by DFO staff and it was confirmed that the Project has works, undertakings or activities that will result in serious harm to fish (**Attachment 3**) requiring a decision for authorization under the *Fisheries Act*. The serious harm to fish likely to result from the proposed works, undertakings, or activities include:

1. Effects on fish habitat:

- Instream construction footprints of physical structures (dam foot print and coffer dams during construction), and estimated at a total of 86.35 ha.
- Interim changes to fish habitat from River Diversion will result in the creation of a headpond and alter riverine fish habitat along approximately 18 km of the Peace River upstream of the dam site, including the confluences of Peace River tributaries within this reach. This will be followed by filling and creation of the Site C Reservoir, which will result in inundation of approximately 2,800 ha of mainstem lotic habitat and 163 ha of tributary lotic habitat. The net residual serious harm to fish associated with filling of the Reservoir is difficult to quantify however, changes to fish habitat are

.../4

anticipated to result in the loss of Arctic Grayling and a significantly depressed population of Peace River Mountain Whitefish.

- Construction of the Site C dam will shift the existing point of flow regulation (i.e., at the outlet of the Peace Canyon dam) by a distance of approximately 85 km downstream, and therefore increase the daily range of flows downstream of the Site C dam. During Facility Operation, daily flow regulation (predicted to range between 1.0-1.5 m) will result in repeated dewatering of some fish habitat along the river margins downstream of the Site C dam. This effect of flow regulation on fish habitat is anticipated to diminish downstream of the Pine River confluence, due to significant flow contributions from the Pine River and the Beatton River further downstream.

2. Effects to fish health and survival:

- Creation of the diversion headpond during River Diversion, and the subsequent filling and creation of the Site C Reservoir, is anticipated to result in the loss of distinct groups of fish that inhabit the existing riverine environment (e.g., Arctic Grayling and River Mountain Whitefish).
- Stranding of fish and fish eggs is anticipated in the Peace River during River Diversion, as the diversion headpond is to be repeatedly dewatered.
- Fish entrained through the diversion tunnels during River Diversion and through the modified diversion tunnel during Reservoir Filling is likely to result in death of fish.
- Fish entrained through the generating station during Reservoir Filling and Operations are anticipated to have size-dependent survival rate estimated at approximately 60% for large fish.
- Fish entrained through the spillways during Reservoir Filling and Facility Operations are anticipated to have a high rate of survival (likely >95%).
- Fish will be entrained through the generating station and spillways during Facility Operation. Annual entrainment rates were modelled by BC Hydro in its Fish Passage Management Plan to be <10% for the population for all fish species except for bull trout, kokanee, lake whitefish and lake trout. However, due to the fundamental changes in the aquatic ecosystem as a result of the creation of the reservoir fish movement patterns and entrainment risk may be greater.
- Potential stranding of fish downstream of the dam site during Facility Operation due to flow regulation. Effects on fish from stranding are anticipated to occur largely in the reach between the dam site downstream to the Pine River, as the effects of flow regulation are anticipated to attenuate with inflows from the Pine River and the Beatton River further downstream.
- Potential stranding of fish in the reservoir during Facility Operation.
- Incidental mortality of fish during upstream fish passage by means of the temporary and permanent trap and haul facilities and associated sorting, sampling, transport and release. The acceptable level of incidental mortality is to be no more than 5% of the total number fish captured by the trap and haul facilities and associated sorting, sampling, transport, and release on an annual basis.

3. Effects on fish movement:

- During River Diversion, Reservoir Filling, and Facility Operation upstream fish movement at the dam site will be blocked, and in combination with the anticipated

.../5

habitat changes in the reservoir, will contribute to the decline of Arctic Grayling and Mountain Whitefish.

Fisheries Act Authorization

Under Paragraph 35(2)(b) of the *Fisheries Act* the Minister has the authority to authorize works undertaking or activities that cause serious harm to fish. The Authorization has been developed following a consistent national template and includes a series of enforceable conditions that the Proponent is required to follow. The conditions of authorization are set out with the objective of providing for the sustainability and ongoing productivity of the fisheries, and are focused on mitigation measures to avoid and reduce avoid serious harm, offsetting measures to counter balance serious harm to fish and monitoring conditions to ensure appropriate information is collected and provided to DFO to track compliance and effectiveness of the various mitigations and offsets, and potential accommodation of impacted Indigenous groups.

Mitigation measures that are practically feasible to mitigate serious harm to fish are included as conditions of the proposed Site C authorization. Monitoring by the Proponent to ensure mitigation measures are being implemented and are mitigating serious harm to fish is also a condition of the authorization.

As there will be serious harm to fish after the application of avoidance and mitigation measures, the Proponent has developed a plan to undertake offsetting measures, the compliance of which will be secured through conditions to the authorization. The offsetting plan aims to enhance fish habitat and contribute to the Fisheries Management Objectives (FMO), particularly for those fish species identified as high value target species for anglers in the provincial FMOs. Offsetting measures to be undertaken will include:

- Peace River Channel Contouring and Side Channel Enhancement, which will:
 - increase the amount of available, permanently wetted habitat for fish.
 - provide rearing, feeding, overwintering, and potential spawning habitats for fish.
 - reduce channel dewatering and potential fish stranding risk in the area; and
 - support a variety of life stage uses for local fish populations by increasing the complexity and variability of fish habitat.
- Site C Reservoir Enhancement, which will:
 - increase the area of shallow water habitat, providing a diversity of habitats including backwater habitat.
 - support development of aquatic vegetation and riparian habitat, at select sites along the reservoir shoreline.

Complementary measures are investments in data collection and scientific research related to maintaining or enhancing the productivity of commercial, recreational or Aboriginal fisheries. In areas where there are limited opportunities for measures to offset fisheries productivity losses and where there is limited understanding or data on fisheries populations, complementary measures may be considered in addition to other offsetting measures. These measures are included as a condition of the authorization for Site C for Arctic grayling. The Project is anticipated to result in the loss of the Arctic Grayling population upstream of the proposed dam, so opportunities to offset these fisheries productivity losses upstream of the dam site do not exist. Complementary measures including Arctic grayling data collection/scientific research studies will be undertaken by the Proponent as a condition of the authorization in a variety of areas with the goal of

.../6

enhancing the productivity of Arctic grayling downstream of the dam. Information will also be collected to identify and assess the likely effectiveness of habitat enhancement activities for Arctic grayling. After the results of the scientific and technical studies are completed, options for implementation of fish habitat enhancements will be considered.

Aboriginal Consultation:

When making a regulatory decision to authorize works, undertakings or activities under Paragraph 35(2)(b) of the *Fisheries Act*) DFO is required to conduct Aboriginal consultations with groups that are potentially affected by the proposed project (for detailed description of Indigenous groups refer to Appendix 1, Attachment 6). DFO has undertaken Aboriginal Consultation on the Application with the following potentially affected Indigenous Groups identified as being owed a high duty for consultation:

- Dene Tha' First Nation (letter of support for Project received)
- Duncan's First Nation (letter of support for Project received)
- McLeod Lake Indian Band (letter of support for Project received)
- Horse Lake First Nation (no engagement with DFO)
- Kelly Lake Métis Settlement Society (no engagement with DFO)
- Métis Nation of British Columbia (no engagement with DFO)
- Blueberry River First Nations (engagement with DFO)
- Doig River First Nation (engaged with DFO)
- Halfway River First Nation (engaged with DFO)
- Prophet River First Nation (engagement with DFO via Nun wa dee Stewardship Society)
- West Moberly First Nations (engaged with DFO via Nun wa dee Stewardship Society)
- Saulteau First Nations (engagement with DFO)

The high depth of consultation owed to these potentially affected Indigenous groups was determined by the Canadian Environmental Assessment Agency during the EA phase, and this depth assessment was carried forward by DFO and applied to regulatory applications for the Site C Project received by the Department since conclusion of the EA.

Following receipt of the Application on December 22, 2015, DFO sent a letter along with BC Hydro's Application enclosed to the potentially affected Indigenous Groups identified above. DFO requested their views on the proposed works, undertakings or activities described in the Application, and any comments they may have regarding potential impacts to fish and fish habitat, and on asserted or established Aboriginal or Treaty rights. The letter also offered the opportunity to meet to discuss the BC Hydro application and offsetting plan, and support DFO's review prior to a regulatory decision on the Application. In some cases, Indigenous groups were very responsive and accepted DFO's request to meet and discuss the regulatory application, while in other cases, Indigenous groups either responded in writing to express their views or did not respond. DFO followed up with additional letters when no response was received, and was very responsive to requests to meet and/or provide information and clarification on issues raised.

Between December 2015 and July 2016, the Department made concerted efforts to consult with the potentially affected Indigenous groups, to provide meaningful opportunities for input on the

.../7

current application, carry out a dialogue on issues of concern to Indigenous groups, and to provide timely responses to all Indigenous groups that provided comments (**Attachment 4**).

s.21(1)(b)

s.23

West Moberly First Nations and Prophet River First Nation are Treaty 8 First Nations represented collectively by the Nun wa dee Stewardship Society (the Nun wa dee), an entity which reviews regulatory applications on behalf of these groups. Salteau First Nations, which is also a Treaty 8 signatory, requested that consultation on the Application with their community also be channelled through the Nun wa dee. Engagement with these three groups via the Nun wa dee did not initiate until March 22, 2016, despite multiple efforts by DFO. Consultation engagement with the Nun wa dee on BC Hydro's Application has been complex largely due to outstanding litigation in the Federal Court of Appeal in relation to the Federal Environmental Decision Statement allowing the Project to proceed. This litigation was brought forward by West Moberly First Nations and Prophet River First Nation, and the court case is anticipated to be heard in September 2016.

West Moberly First Nations and Prophet River First Nation have requested that DFO and Transport Canada (TC) cease processing of all regulatory applications and associated consultation, pending the court's decision. Through written correspondence with these two groups, the former Minister indicated that DFO will not put a decision on issuance of the *Fisheries Act* authorization on hold, and on July 18, 2016, Minister Leblanc met with West Moberly First Nations Chief Roland Willson and Prophet River First Nation Chief Lynette Tsakoza to discuss their concerns regarding the Site C Project.

Blueberry River First Nation has engaged with DFO in discussing BC Hydro's Application, and expressed concerns broader than the regulatory application at hand (i.e. cumulative effects, reconciliation, etc.). DFO was able to engage in deep consultation with Doig River First Nation and McLeod Lake Indian Band, who provided a detailed technical review of BC Hydro's Application and commented on DFO's Draft Conditions of Authorization. Halfway River First Nation met with DFO in March 2016 to discuss the Application, and expressed concerns related to BC Hydro's trap and haul program and changes to the fish community as a result of the creation of the Site C reservoir. DFO responded to these concerns in writing providing baseline information on the Peace River fish community and detailed information on BC Hydro's trap and haul program as requested by Halfway River First Nation. Dene Tha' First Nation had a lower level of engagement with DFO expressing concerns via written correspondence related to methylmercury, which DFO addressed in written responses to this Indigenous Group.

The Duncan's First Nation, Dene Tha' First Nation and McLeod Lake Indian Band have all expressly provided DFO with a letter of support for the Project, while Horse Lake First Nation, Kelly Lake Métis Settlement Society, and the Métis Nation British Columbia have not engaged with DFO after multiple rounds of follow-up correspondence.

Details of BC Hydro's engagement with these high depth of consultation Aboriginal groups and accommodations measures are set out in (Attachment 6)



.../8

s.21(1)(b)

s.23

DFO recognizes the large scale ecosystem transformation in the Peace River that will occur as a result of the construction and operation of the Site C dam as well as the uncertainty in outcomes related to the final assemblage of fish species, overall biomass and populations in the reservoir, its tributaries and in the Peace River downstream, post dam construction. In addition, the Department acknowledges the important concerns raised by Indigenous groups and specifically the residual impacts to the fishing opportunities and practices resulting from the construction and operation of the Project.

The extent, duration, and magnitude of effects on the aquatic ecosystem as the result of the proposed works, undertakings or activities are significant, and the response of the aquatic ecosystem and associated biota to the transformation of a portion of the Peace River into a reservoir is uncertain. As such, supplementary and other measures may be required should monitoring results indicate that the residual impacts to fish and fish habitat are greater than anticipated in the Application for Authorization and/or to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

In an effort to minimize impacts to asserted or established Aboriginal or Treaty rights (e.g., fishing opportunities and practices), and to fish and fish habitat, DFO is relying on a variety of measures and actions, that have been informed by Aboriginal consultation including:

- 1) **Fisheries Act Authorization** conditions which require avoidance, mitigation, monitoring, offsetting, and supplementary measures to ensure the sustainability and ongoing productivity of the fishery, and long-term monitoring and adaptive management measures to address uncertainty in the future state of the fish community (**Attachment 5**);
- 2) **Condition 7** has been included in the *Fisheries Act* Authorization to enable supplementary and other measures to be required should there be greater impacts than anticipated and/or to address the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Condition 7.2 specifically identifies mandatory measures aimed at supporting meaningful engagement and information sharing with Indigenous groups in relation to Project activities.
- 3) **The BC Water Licence permit conditions** requiring mitigation measures, long term monitoring and adaptive management, and offsetting measures in addition to a compensation fund and supplementary measures, to ensure the sustainability and ongoing productivity of the fishery, (**Attachment 6**);
- 4) **The BC Environmental Assessment Certificate conditions** (**Attachment 7**)
- 5) **The federal CEAA decision statement conditions** (**Attachment 2**)
- 6) **Existing and ongoing offers by BC Hydro and the BC Government** related to accommodation and other measures to address potential infringements on Aboriginal Treaty rights (**Attachment 6**); and
- 7) **DFO intent for ongoing dialogue with Indigenous groups** related to adaptive management decisions related to this project. In light of the limited engagement in relation to potential accommodation measures, an explicit opportunity to continue DFO's engagement with potentially affected Indigenous groups to develop a respectful and collaborative process, and to dialogue on future monitoring and adaptive management

.../9

s.19(1)

measures to ensure the sustainability and ongoing productivity for CRA fisheries (including addressing residual impacts to fishing rights and practices).

Fisheries Act Section 6 Considerations:

Prior to making a decision on Authorization under Paragraph 35(2)(b) of the *Fisheries Act* the Minister must consider the 4 factors set out in section 6 of the *Fisheries Act*. The Checklist for Consideration of the Factors set out in Section 6 of the Fisheries Act has been completed (**Attachment 8**) and is summarized below:

1. **The contribution of the fish to the ongoing productivity of CRA fisheries.** In the review of the Project, DFO has assessed project impacts to those fish species that are part of the recreational and Aboriginal fishery (at present there is no commercial fishery in the project area);
2. **Fisheries management objectives.** In the review of the Project, DFO has considered the provincial fish objectives for the project area. The Department's goal is "... to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries" as set out in the *Fisheries Protection Policy Statement* (2013). The province of BC through delegated authority under the *Fisheries Act* has responsibility for the province's freshwater species. In this capacity, the BC Ministry of Environment is responsible for managing the fisheries of the Peace River watershed. The BC Ministry of Environment has developed the following FMO document which applies in the project area: *Ministry of Environment Fish and Wildlife Interim Objectives for the Site C Project Area Draft 2009* updated as per the December 7, 2015 Memo from [REDACTED] Ecofish Research Ltd. to Mr. Ted Down of the Ministry of Environment of British Columbia with the subject "RE: Site C fish objectives conclusion from MOE/FLNRO workshop 25 Nov 2015 – Draft". In summary the overall objectives for fish in the lower Peace Region are: a) Maintaining Ecosystem Integrity and Productivity; and b) Sustainable Use.

The Project will result in an aquatic ecosystem transformation from a riverine to reservoir environment. This will change the system from a shallow fast flowing river to a large deep slow flowing lake-like waterbody. This large scale biophysical change will result in cascading changes throughout the aquatic community, affecting productivity of invertebrates, forage fish species, and larger piscivorous species of value to recreational and Aboriginal fisheries (note: there is no commercial fishery). Over the 10 year period after Project completion, the Project is predicted to result in increased biomass for fish species such as Bull Trout, Kokanee, Rainbow Trout, and Lake Trout and decreased biomass for other fish species such as Mountain Whitefish, Arctic Grayling and Walleye. Arctic grayling and mountain whitefish are predicted to be eliminated from the reservoir due to their life history requirements that are not compatible with the reservoir environment. Downstream of the dam site, these species will continue to exist; specifically, mountain whitefish biomass is predicted to increase, while Arctic grayling and Walleye biomass is anticipated to be reduced. Overall, while the fish community composition will change, fish biomass is predicted to increase post-project. Significant increases in kokanee biomass are expected to be the major contributor to the overall increase in fish biomass in the reservoir, and this species will serve as an important forage

.../10

fish for other larger CRA fish species like Bull trout, Rainbow trout, burbot and Lake trout, which are expected to increase in the reservoir environment.

The overall increases in fish biomass resulting from the reservoir transformation will be consistent with the fisheries management objectives as stated above. Importantly, the aquatic ecosystem transformation associated with the change from a riverine to reservoir environment is likely to have a far greater bearing on the achievement of the fisheries management objectives than the proposed avoidance, mitigation and offsetting measures. Therefore, the monitoring programs and adaptive management proposed by BC Hydro are crucial in identifying and informing whether the future fish community in the reservoir and downstream of the dam occurs in line with FMOs. Given this uncertainty, contingency offsetting, adaptive management processes, and supplementary measures are included as Conditions of the Authorization with the aim of ensuring the long-term sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

DFO, BC Hydro and the Province of BC are participating in a Site C Fisheries and Aquatic Habitat Mitigation and Monitoring Technical Committee with the aim of ensuring that project effects and associated monitoring, mitigation, and offsetting occur in line with fisheries management objectives. Under the terms of reference, Indigenous groups may be invited to be a part of the Technical Committee to support the ongoing implementation of mitigation and monitoring plans.

While the Project will result in an aquatic ecosystem transformation from a riverine to reservoir environment and associated changes in the fish community and fish biomass in the reservoir, as noted above, that may affect fishing opportunities for First Nations, these opportunities will continue to exist during construction and after completion of the Project. Although some fishing opportunities such as rivershore fishing and/or preferred fish species such as Arctic grayling and mountain whitefish will no longer be available within the reservoir, these fishing opportunities for preferred species will continue to exist downstream of the reservoir, and new fishing opportunities for First Nations will be created in the reservoir for preferred species such as bull trout and less-preferred species such as kokanee and lake trout.

3. **Whether there are measures and standards to avoid, mitigate or offset serious harm to fish that are part of a CRA fishery, or that support such a fishery.** Measures to avoid serious harm to fish were incorporated into the project design and location of project elements. Measures to mitigate and offset serious harm to fish will be implemented and are required as conditions of the Fisheries Act, paragraph 35(2)(b) authorization. A detailed outline of the mitigation, monitoring and offsetting measures have been presented earlier in this rationale.
4. **The public interest.** The public were provided the opportunity to comment as part of the environmental assessment of the Project. No public consultation was conducted during the regulatory phase as there is no requirement to do so. However, the public has taken the opportunity to express their views and/or concerns in letters to the Minister and other senior departmental officials. To date, it appears that concerns expressed by the public

.../11

are not new and have been considered when the conditions in the federal Decision Statement as well as the conditions in the BC Environmental Assessment Certificate for the Site C Project were developed.

DFO is aware of three topics that have been expressed for the Project relating to the public interest: 1) increases in methylmercury in fish, 2) the effectiveness of the fish passage management plan, and 3) impacts to certain recreational and Aboriginal fisheries.

With regard to concerns raised regarding methylmercury, fish consumption and human health effects, these concerns are addressed by Condition 13 of the federal Decision Statement which contains measures the Proponent must follow to address this issue.

With regard to the fish passage, the Proponent will be undertaking effectiveness monitoring of the fish passage management program to confirm its effectiveness. The Fish Passage Management Plan is discussed within the Environmental Impact Statement Volume 2, Appendix Q1, and with further design information within Technical Memorandum No. T009 and P009 included in Schedule A of the Authorization. This is also a Condition of the Fisheries Act Authorization

With respect to impacts on certain recreational and Aboriginal fisheries, the Project will result in ecosystem level impacts in the Peace River watershed, and there is uncertainty in the predicted response of the aquatic ecosystem in relation to potential serious harm, offsetting outcomes, and the achievement of FMO objectives. To manage for these uncertainties, the Proponent is implementing an adaptive management and monitoring program, with the goal of informing decisions on the appropriateness and effectiveness of mitigation and offsetting measures and opportunities for contingency offsetting measures as appropriate.

Over the 10 year period after project completion, the Project is predicted to result in increased biomass for some fish species (e.g., Bull Trout, Kokanee, Rainbow Trout and Lake Trout) and decreased biomass for other fish species (e.g., Mountain Whitefish, Arctic Grayling and Walleye). Overall, while the fish community composition will change, fish biomass is predicted to increase post-project, resulting in overall increased productivity for recreational and Aboriginal fisheries.

The Project will result in changes in the fish community and fish biomass in the reservoir. This will affect fishing opportunities such as rivershore fishing and/or preferred fish species such as Arctic grayling and mountain whitefish which will no longer be available within the reservoir. These fishing opportunities and/or preferred species will continue to exist downstream of the reservoir.

To ensure the adaptive management approach is providing for the sustainability and ongoing productivity of recreational and Aboriginal fisheries, the *Fisheries Act* Authorization provide a condition (Condition 7) to enable supplementary measures to be required should there be greater impacts than anticipated.

DFO considered the public interest independently of the comments it received and concerns it was made aware of through the environmental assessment process and consultation on the *Fisheries Act* Authorization.

Having considered the above three topics related to public interest, it is DFO's view that authorizing the Project will provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

INTRADEPARTMENTAL CONSULTATIONS

During the Environmental Assessment process, DFO Science Branch provided advice to FPP and the Joint Review Panel on the Effects of Site C Clean Energy Project on Fish and Fish habitat of the Peace River, BC.

INTERDEPARTMENTAL CONSULTATIONS

Transport Canada needs make a decision on issuance of approvals under the *Navigation Protection Act* for the Site C Main Civil Works and Facility Operations. The Department coordinated with Transport Canada during federal consultation activities with potentially affected Indigenous groups and is working with Transport Canada to coordinate timing, legal advice and media lines on the issuance of our respective authorization/approvals.

DFO and Transport Canada have also been sharing information with the Canadian Environmental Assessment Agency and the Major Projects Management Office and have been receiving support from the relevant departmental Legal Services Units.

RATIONALE FOR RECOMMENDATION

The recommendation set out below is based on the proceeding information, including Attachments, and analysis which can be summarized as follows:

The *Fisheries Act*, s. 6 factors have been considered through DFO's review of the Application and DFO is of the view that Aboriginal consultation conducted on the regulatory application has been adequate. As such, DFO is satisfied that the requested authorization can be issued pursuant to paragraph 35(2)(b) of the *Fisheries Act*.

In short, the overall impacts to the sustainability and ongoing productivity of the commercial (not currently relevant), recreational and Aboriginal fisheries from the Project can be managed through the conditions of the proposed authorization, which includes avoidance, mitigation, and offsetting measures, along with adaptive management processes and supplementary and other measures to manage for uncertainties in future fisheries productivity. The Province of BC has responsibility over the freshwater fisheries affected by the Project and has developed Fisheries Management Objectives aimed at maintaining ecosystem integrity and productivity, while enabling sustainable use. DFO, the Province and BC Hydro are participating in a Site C Fisheries and Aquatic Habitat Mitigation and Monitoring Technical committee with the aim of ensuring that Project effects and associated monitoring, mitigation and offsetting occur in line with

.../13

s.21(1)(b)

s.23

FMOs. The public interest was considered as part of the s.6 considerations, and included issues raised by the public related to methylmercury increases, the effectiveness of fish passage and impacts to recreation and Aboriginal fisheries. These public interest issues are addressed either in the federal Decision Statement or in Conditions of the Authorization (e.g., the requirement for a fish passage management plan, requirement for mitigation, offsetting and monitoring, etc.).



DFO is relying on a variety of measures and actions that have been informed by Aboriginal consultations including:

- the conditions in the proposed *Fisheries Act* authorization that ensure sustainability and ongoing productivity of the fishery, which are supported by long-term monitoring , adaptive management and supplementary and other measures;
- the measures included in the conditions of the BC Water License permit and in the federal CEAA decision statement conditions, which support the sustainability and ongoing productivity of recreational and Aboriginal fisheries;
- existing and ongoing effort by BC Hydro and BC Government related to accommodation and other measures to address potential infringements on Aboriginal treaty rights; and
- a commitment by DFO to provide an explicit opportunity for ongoing Aboriginal engagement and dialogue on future monitoring and adaptive management measures (supported by authorization condition 7) to ensure the sustainability and ongoing productivity for CRA fisheries, and to discuss minimize residual impacts to fishing rights resulting from the project.

RECOMMENDATIONS TO THE REGIONAL DIRECTOR GENERAL

It is recommended that the Regional Director General approve the attached Considerations Under Section 6 of the Fisheries Act document (**Attachment 8**) and issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act* for works, undertakings or activities associated with the Site C Main Civil Works and Facility Operations to BC Hydro, and sign the attached Start the Clock letter, authorization, cover letter and Sign-off form (**Attachments 9, 5, 10, 11**).

Cheryl Webb
Regional Director

☐ I concur with the recommendations

☐ I do not concur with the recommendations

Rebecca Reid
Regional Director General

Regional Director General's Comments:

List of Attachments

1. Joint Review Panel Report
2. CEAA Decision Statement
3. SHDR
4. Aboriginal Consultation Record and Issues Tracker
5. *Fisheries Act* Authorization
6. Provincial Water Licence Rational document
7. BC Environmental Assessment Certificate conditions
8. Checklist for Consideration of the Factors set out in Section 6 of the *Fisheries Act*
9. Start the Clock Letter
10. *Fisheries Act* Authorization Cover Letter
11. Sign off Letter



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CLASSIFICATION
GCCMS #: 2016-XXX-00XXX
EKME #: XXXXXXXX

To: Rebecca Reid, Regional Director
Pour: General

Date:

Object: **SITE C CLEAN ENERGY PROJECT**
Objet: **ISSUANCE OF FISHERIES ACT S.35(2)(B) AUTHORIZATION FOR SITE C**
MAIN CIVIL WORKS AND FACILITY OPERATIONS

From / De: Cheryl Webb, Regional Director, EMB

Via:

Additional approvals:

Autre(s) approbation(s):

☒ Your Signature
Votre signature

☐ Information

☐ For Comments
Observation

☐ Material for the RDG
Documents pour le

Remarks:

Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur:

Brad Fanos (604-666-3909)



Fisheries and Oceans
Canada

Regional Director General
Pacific Region
Suite 200 - 401 Burrard Street
Vancouver, British Columbia
V6C 3S4

Pêches et Océans
Canada

Directrice générale régionale
Région du Pacifique
Pièce 200 - 401 rue Burrard
Vancouver (C.-B.)
V6C 3S4

July 27, 2016

Your file

Votre référence

Our file

Notre référence

15-HPAC-01160

British Columbia Hydro and Power Authority
Four Bentall Centre, 1100-1055 Dunsmuir Street
PO BOX 49260
Vancouver, BC V7X 1V5

s.19(1)

Dear [REDACTED]

Subject: *Fisheries Act* Authorization

Pursuant to paragraph 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries and Oceans Canada authorizes the carrying on of the works, undertakings or activities that result in serious harm to fish arising from main civil works and facility operations for the Site C Clean Energy Project. A paragraph 35(2)(b) *Fisheries Act* authorization is attached.

Our expectation is that you and your organization will continue to collaborate with affected indigenous groups to address their concerns through various means, including ongoing consultations, continued efforts to negotiate agreements and the implementation of the measures identified under Condition 7 in the Authorization.

Please note that failure to comply with any of the terms or conditions of the attached Authorization may lead to prosecution under the *Fisheries Act*.

A copy of this Authorization should be kept on site while the work is in progress and upon request be provided to relevant federal or provincial officials. Work crews should be familiar with, and able to adhere to, the conditions.

If you or anyone conducting work on your behalf have any questions please contact Brian Naito at our Regional Headquarters office at 604-790-4260 or by email at brian.naito@dfo-mpo.gc.ca.

Yours sincerely,

Rebecca Reid
Regional Director General

Attachment: *Fisheries Act* S.35(2)(b) Authorization



PARAGRAPH 35(2)(b) FISHERIES ACT AUTHORIZATION

Authorization issued to

British Columbia Hydro and Power Authority (*hereafter referred to as the "Proponent"*)

Attention:

Four Bentall Centre
1100-1055 Dunsmuir Street
PO BOX 49260
Vancouver, BC V7X 1V5

s.19(1)

Location of Proposed Project

Nearest community (city, town, village): Fort St. John
Municipality, district, township, county: Peace River Regional District
Province: British Columbia
Name of watercourse, waterbody: Peace River and associated tributaries
Longitude and latitude: 56° 11'42" N 120° 54' 51" W

Description of Proposed Project

The proposed project of which the authorized works, undertakings or activities form a part involves:

- Construction of the dam, generating station and spillways, and certain ancillary works consisting of a permanent network of site roads, site drainage and debris handling facilities;
- Clearing of the area to be flooded upon creation of the reservoir;
- Construction of the Hudson's Hope shoreline protection and the Highway 29 realignment east of Lynx Creek;
- Filling of the reservoir (*hereafter "Reservoir Filling"*); and
- Operation of the hydroelectric facility (*hereafter "Facility Operation"*).

Description of Authorized works, undertakings or activities likely to result in serious harm to fish

The works, undertakings, or activities associated with the proposed project described above, that are likely to result in serious harm to fish, are:

1. Stage 1 Cofferdams
 - Construction of the north bank cofferdams on the Peace River at the location of the dam site; and
 - Construction of the diversion inlet and outlet cofferdams and channels.
2. Stage 2 Cofferdams
 - Installation of the rockfill berm and the upstream and downstream cofferdams in the Peace River mainstem that will block river flows and allow for construction of the earthfill dam; and
 - Construction of the diversion closure cofferdam to cease operation of the diversion tunnels when reservoir filling is nearing completion.
3. River Diversion
 - Diversion of Peace River flow through the diversion tunnels, and creation of an approximately 18km long headpond upstream of the dam site.
4. Moberly River Construction Bridge
 - Infill associated with installation of a crossing over the Moberly River.



6. Earthfill Dam
 - Construction of the earthfill dam in the isolated area of the Peace River channel between the upstream and downstream Stage 2 cofferdams.
7. Relocated Surplus Excavated Material (RSEM) Sites
 - Construction of RSEMs L5 and L6 to store excavated material from construction activities that is surplus or unsuitable for construction.
8. Highway 29 Realignment
 - Infilling below the high water mark along the north bank of the Peace River east of Lynx Creek to construct the Highway 29 realignment.
9. Shoreline Protection near Hudson's Hope
 - Infilling below the high water mark along the north bank of the Peace River near Hudson's Hope for the purposes of armouring the bank and preventing erosion.
10. Filling of the Reservoir
 - Creation of an approximately 83 km long reservoir upstream of the dam site, converting riverine fish habitat to reservoir fish habitat.
11. Facility Operation
 - Operation of the generating station and infrequent operation of the spillways for the purpose of generating power from the facility. For the purposes of this Authorization, Facility Operation only includes normal operating conditions (i.e., when the Site C Reservoir is operated between the elevations of 460.0 - 461.8 masl measured at the dam using Geodetic Survey of Canada datum), and does not include potential serious harm to fish associated with works, undertakings or activities beyond normal operating conditions (e.g., non-routine maintenance, emergency events, or other factors).

The works, undertakings or activities listed above are more specifically described in the submission from the Proponent entitled "DFO – Application for Authorization Dam Construction, Reservoir Preparation, and Filling," (hereafter "the Application for Authorization") dated December 15, 2015 and produced for the British Columbia Hydro and Power Authority by Golder Associates Ltd., Ecofish Research Ltd., Limnotek Research and Development Inc., and BC Hydro.

The serious harm to fish likely to result from the proposed works, undertakings, or activities, and covered by this authorization includes:

1. Effects on fish habitat:
 - Instream construction footprints of physical structures described in **Schedule B**, and estimated at a total of 86.35 ha.
 - Interim changes to fish habitat from River Diversion will result in the creation of a headpond and alter riverine fish habitat along approximately 18 km of the Peace River upstream of the dam site, including the confluences of Peace River tributaries within this reach. This will be followed by filling and creation of the Site C Reservoir, which will result in inundation of approximately 2,800 ha of mainstem lotic habitat and 163 ha of tributary lotic habitat. The net residual serious harm to fish associated with filling of the Reservoir is difficult to quantify however, changes to fish habitat are anticipated to result in the loss of Arctic Grayling and a significantly depressed population of Peace River Mountain Whitefish. Predicted short-term and long-term biomass estimates in the reservoir are included in **Schedule C**.
 - Construction of the Site C dam will shift the existing point of flow regulation (i.e., at the outlet of the Peace Canyon dam) by a distance of approximately 85 km downstream, and therefore increase the daily range of flows downstream of the Site C dam. During Facility Operation, daily flow regulation (predicted to range between 1.0-1.5 m) will result in repeated dewatering of some fish habitat along the river margins downstream of the Site C dam. This effect of flow regulation on fish habitat is anticipated to diminish downstream of the Pine River confluence, due to significant flow contributions from the Pine River and the Beaton River further downstream.



2. Effects to fish health and survival:

- Creation of the diversion headpond during River Diversion, and the subsequent filling and creation of the Site C Reservoir, is anticipated to result in the loss of distinct groups of fish that inhabit the existing riverine environment (e.g., Arctic Grayling and Peace River Mountain Whitefish).
- Stranding of fish and fish eggs is anticipated in the Peace River during River Diversion, as the diversion headpond is to be repeatedly dewatered.
- Fish entrained through the diversion tunnels during River Diversion and through the modified diversion tunnel during Reservoir Filling is likely to result in death of fish.
- Fish entrained through the generating station during Reservoir Filling and Facility Operations are anticipated to have a size-dependent survival rate estimated to be approximately 60% for large fish.
- Fish entrained through the spillways during Reservoir Filling and Facility Operations are anticipated to have a high rate of survival (likely >95%).
- Fish will be entrained through the generating station and spillways during Facility Operation. Annual entrainment rates were modelled by BC Hydro in its Fish Passage Management Plan (see **Schedule A**) to be <10% for the population for all fish species except for bull trout, kokanee, lake whitefish and lake trout. However, due to the fundamental changes in the aquatic ecosystem as a result of the creation of the reservoir fish movement patterns and entrainment risks may be greater than those modelled.
- Potential stranding of fish downstream of the dam site during Facility Operation due to flow regulation. Effects on fish from stranding are anticipated to occur largely in the reach between the dam site downstream to the Pine River, as the effects of flow regulation are anticipated to attenuate with inflows from the Pine River and the Beatton River further downstream.
- Potential stranding of fish in the reservoir during Facility Operation.
- Incidental mortality of fish during upstream fish passage by means of the temporary and permanent trap and haul facilities and associated sorting, sampling, transport and release. The acceptable level of incidental mortality is to be no more than 5% of the total number fish captured by the trap and haul facilities and associated sorting, sampling, transport, and release on an annual basis.

3. Effects on fish movement:

- During River Diversion, Reservoir Filling, and Facility Operation upstream fish movement at the dam site will be blocked, and in combination with the anticipated habitat changes in the reservoir, will contribute to the decline of Arctic Grayling and Mountain Whitefish.

General Considerations

If information contained in the documents listed in **Schedule A** is in conflict with the Conditions of Authorization, the Conditions of Authorization shall supersede information in the aforementioned documents. In circumstances where the Proponent is seeking an extension to timelines identified in this authorization, or updating and/or revising documents referenced in **Schedule A**, the Proponent should provide DFO with the opportunity to review and comment on the documents, and is advised to notify potentially affected reservoir area Aboriginal groups and potentially affected immediate downstream area Aboriginal groups, as defined in the Decision Statement for the Site C Clean Energy Project, in a timely manner of these potential changes.

Conditions of Authorization

The above described works, undertakings or activities that are likely to result in serious harm to fish must be carried on in accordance with the following conditions.



1. **Conditions that relate to the period during which the work, undertaking or activity that will result in serious harm to fish can be carried on**

The work, undertaking or activity that results in serious harm to fish is authorized to be carried out during the following periods:

Project Construction Phase: From: **Date of Issuance** To: **December 31, 2026**

Facility Operations Phase: From: **January 1, 2022** To: **December 31, 2064**

If the Proponent cannot complete the construction works, undertaking or activities described in items 1-10 under the heading, "Description of Authorized works, undertakings or activities likely to result in serious harm to fish" during the Project Construction Phase, Fisheries and Oceans Canada (DFO) must be notified 3 months in advance of the expiration of the above time period. DFO may, where appropriate, provide written notice that the period to carry on the work, undertaking or activity has been extended.

The periods during which other conditions of this authorization must be complied with are provided in their respective sections below. DFO may, where appropriate, provide written notice that these periods have been extended, in order to correspond to the extension of the period to carry on a work, undertaking, or activity.

2. **Conditions that relate to measures and standards to avoid and mitigate serious harm to fish**

- 2.1 The Proponent shall ensure that the location and design of the works, undertakings or activities are consistent with the information included in the Application for Authorization (**see Schedule A**).
- 2.2 The Proponent shall maintain a minimum water flow release of 390 cubic metres per second from the Site C dam during Facility Operations.
- 2.3 The Proponent shall implement the measures and standards described below and as appropriate from the Fisheries and Aquatic Habitat Management Plan (see **Schedule A**) to avoid and mitigate serious harm to fish:
 - 2.3.1 Effective sediment and erosion control measures shall be installed before starting construction, and maintained during and after construction activities as appropriate to reduce the potential for introduction of sediment into watercourses.
 - 2.3.2 In-water pile driving activities shall be monitored via hydrophone to ensure that underwater peak pressures do not result in serious harm to fish. Appropriate mitigation measures (e.g., bubble curtains) shall be implemented to avoid adverse impacts to fish.
 - 2.3.3 Intakes of any pumps shall be screened in accordance with Fisheries and Oceans Canada's *Freshwater Intake End-of-Pipe Fish Screen Guidelines* (Fisheries and Oceans Canada 1995)
 - 2.3.4 Fish salvage and relocation shall be conducted prior to the start of construction activities so as to avoid and minimize adverse impacts to fish.
 - 2.3.5 Fish passage shall be maintained in fish bearing watercourses at all times excepting circumstances where natural flows, an authorized work, undertaking or activity, or construction of an offset precludes the passage of fish.
 - 2.3.6 Disturbed riparian areas shall be replanted where technically feasible and appropriate, with native non-invasive species of vegetation.
 - 2.3.7 Temporary structures installed below the high water mark shall be decommissioned and removed when they are no longer being used for construction purposes, unless retaining the structure can be demonstrated to DFO to reduce potential harm and/or provide a benefit to fish.
- 2.4 To mitigate effects on fish movement associated with construction and operation of the Project, the Proponent shall implement its Fish Passage Management Plan discussed within the Environmental Impact Statement Volume 2, Appendix Q1, and with further design information within Technical Memorandum No. T009 and P009 (see **Schedule A**) with any amendments approved by DFO.
- 2.5 If monitoring required in Condition 3 below indicates that the measures and standards to avoid and mitigate serious harm to fish are not effective, at the request of DFO, the Proponent shall in consultation with DFO



identify additional measures and standards to avoid and mitigate the serious harm to fish caused by works, undertakings or activities authorized here-in, and where it is technically and economically feasible to do so, implement those additional measures or standards.

3. Conditions that relate to monitoring and reporting of measures and standards to avoid and mitigate serious harm to fish during the Project Construction Phase

- 3.1 Construction works, undertakings and activities shall be monitored on a systematic and on-going basis to ensure that standards and measures to avoid serious harm to fish are effective and that unauthorized serious harm to fish from works, undertakings or activities is avoided.
- 3.2 Monitoring of avoidance and mitigation measures: The Proponent shall monitor the implementation of avoidance and mitigation measures referred to in section 2 of this authorization and provide a Quarterly monitoring report to DFO by March 31st, June 30th, September 30th, and December 31st respectively of each year unless otherwise agreed to by DFO. These monitoring reports must indicate whether the measures and standards to avoid and mitigate serious harm to fish were conducted according to the conditions of this authorization. This shall be done, by:
- 3.2.1 Providing a concise summary of the works, undertakings or activities carried out or undertaken within that quarter.
- 3.2.2 Providing commentary on the works, undertakings or activities, and the work area from an environmental perspective (e.g., fish observations, weather, and water quality).
- 3.2.3 Demonstrating effective implementation and functioning of avoidance and mitigation measures: Providing dated photographs and inspection reports to demonstrate effective implementation and functioning of mitigation measures and standards described above to limit the serious harm to fish associated with each work, undertaking or activity is covered by this authorization.
- 3.2.4 Implementing contingency measures when necessary: Identification and photographic documentation of any environmental issues (e.g., potential non-compliance events) or impacts that arose or occurred in relation to fish and fish habitat, and details of any contingency measures that were followed to prevent impacts greater than those covered by this authorization in the event that mitigation measures did not function as described.
- 3.2.5 Demonstrating compliance with Environmental Protection Plans (EPPs): Reporting on compliance with EPPs pertaining to fish and fish habitat, including provision of copies of the relevant EPP(s) as appendices within the quarterly monitoring report(s).
- 3.2.6 Providing a table summarizing outstanding issues with respect to fish and fish habitat (those without on-the-spot solutions or those requiring follow-up to ensure corrective measures are being used), proposed/planned mitigation measures, priority and completion due-by date.
- 3.3 Proponent may request a variance in the aforementioned construction monitoring reporting requirements, which will be reviewed and may be accepted at the discretion of DFO.

4. Conditions that relate to monitoring and reporting of measures and standards to avoid and mitigate serious harm to fish during the Facility Operations Phase

- 4.1 The Proponent shall undertake all the Monitoring Programs detailed within the Fisheries and Aquatic Habitat Monitoring and Follow-up Program (see **Schedule A**) that relate to Facility Operation, and shall in consultation with DFO develop additional monitoring programs (and associated reporting) if required to determine whether serious harm to fish is greater than anticipated in the Application for Authorization. The Proponent shall provide reports on the implementation of the Monitoring Programs in the Fisheries and Aquatic Habitat Monitoring and Follow-up Program that relate to Facility Operation to DFO annually by March 1 of the year following collection of monitoring data unless otherwise specified by DFO.
- 4.2 If monitoring required in Condition 4.1 indicates that the measures and standards to avoid and mitigate serious harm to fish are not effective, at the request of DFO, the Proponent shall in consultation with DFO identify additional measures and standards to avoid and mitigate the serious harm to fish caused by the



works, undertakings or activities authorized here-in, and where it is technically and economically feasible to do so, implement those additional measures or standards.

5. Conditions that relate to the offsetting of the serious harm to fish likely to result from the authorized work, undertaking or activity

5.1 Letter of credit: Not required as the Proponent is an Agent of the Crown.

5.2 The offsetting measures shall be implemented and/or constructed as described in Section 9.0 in the Application for Authorization. The offsetting measures include:

5.2.1 Peace River channel contouring at Lower Site 109L and Main Channel Bar Excavation downstream of the dam site of not less than 68 ha in area, and side-channel enhancement at Site 108R of not less than 40 ha in area, via 'cut and fill' excavation and deposition, or via material extraction to reduce fish stranding and enhance rearing and foraging habitat for fish species including Mountain Whitefish, Arctic Grayling, Bull Trout, Rainbow Trout and Walleye;

5.2.2 Reservoir shoreline enhancement works at five sites within the Site C reservoir (KM 22-24, KM 25-27, KM 34-35, KM 42-44 and KM 49-52KM) via contouring to increase littoral, backwater and shoal habitat for juvenile fish (likely Kokanee, Lake Whitefish, Rainbow Trout and Burbot) from:

- i. a single spawning shoal of not less than 3.5 ha in area
- ii. a single backwater channel of not less than 70 ha in area; and
- iii. increased littoral habitat of not less than 33 ha in area.

5.2.3 Incorporation of design features (e.g., boulder complexes) into the Hudson's Hope shoreline protection works to create littoral fish habitat for fish species like Bull Trout and Rainbow Trout;

5.2.4 Incorporation of fish habitat features, including spawning gravel and cobbles, in the final capping of the Relocated Surplus Excavated Material Sites (i.e., RSEM 5a of not less than 10 ha in area and RSEM L5 of not less than 4ha in area) within the reservoir immediately upstream of the dam site to provide enhanced littoral habitat for juvenile fish and spawning habitat for species such as Lake Whitefish, Kokanee, Bull Trout and Rainbow Trout;

5.2.5 Planting of not less than 16 ha in area along the reservoir to provide riparian fish habitat (shading, cover, and nutrient inputs) and bank stabilization;

5.2.6 An adaptive management approach proposed as part of the "Fisheries and Aquatic Habitat Monitoring and Follow-up Program" (see **Schedule A**) to support future mitigation and offsetting options after reservoir creation based on follow-up monitoring. Specifically, implementation of tributary habitat enhancements identified under the Tributary Mitigation Opportunities Evaluation Program as described in the Fisheries and Aquatic Habitat Monitoring and Follow-up Program. Implementation of habitat enhancement opportunities resulting from the Tributary Mitigation Opportunities Evaluation Program will benefit stream dependent fish species which may include Arctic Grayling, Bull Trout, Burbot, Goldeye, Mountain Whitefish, Walleye, and Rainbow Trout. The scope, extent and implementation schedule of tributary enhancements is to be developed in consultation with and accepted by DFO after a review of the results of the Tributary Mitigation Opportunities Evaluation Program; and

5.2.7 Complementary measures as provided for within DFO's *Fisheries Productivity Investment Policy: A Proponent's Guide to Offsetting* (November 2013). Specifically, the Proponent shall conduct scientific research and gather information on fish and fish habitat for Arctic grayling, bull trout and mountain whitefish through biological monitoring of the status of these species as described in the Application for Authorization (see **Schedule A**).

5.3 As the designs and specifications of the aforementioned offsetting measures are preliminary, the Proponent commits to providing DFO with final design drawings 60 days prior to the start date of construction of the offsets. In addition, if a variance in the design of the offsetting measure is required, then the Proponent shall discuss the adequacy of the offsetting with DFO, and shall implement offsetting measures as deemed appropriate by DFO.

5.4 Contingency offsetting measures: If the results of monitoring as required in condition 6 indicate that the offsetting measures are not constructed by September 30, 2022 and/or are not functioning according to the criteria in 4.2 above and/or in Section 9.13 of the Application for Authorization, the Proponent shall give



written notice to DFO and shall implement the following contingency measures to ensure the implementation of the offsetting measures is completed and/or functioning as required by this authorization:

- 5.4.1 Additional main channel contouring and/or side channel enhancements in the Peace River similar to those described in subsection 4.2.1 and 4.2.2 of this authorization;
- 5.4.2 Additional tributary enhancements within tributaries of the Peace River based on the results of the Tributary Mitigation Opportunities Evaluation Program
- 5.5 Should the contingency offsetting measures described above be required, an associated effectiveness monitoring program similar to that described in Section 9.12 of the Application for Authorization shall be developed by the Proponent in consultation with DFO to ensure that offsetting contingency measures are completed and/or functioning as intended.
- 5.6 The Proponent shall not carry on any work, undertaking or activity that will adversely disturb or impact the offsetting measures.

6. Conditions that relate to monitoring and reporting of implementation of offsetting measures (described above in section 5)

- 6.1 Schedule(s) and criteria: The Proponent shall conduct monitoring of the implementation of offsetting measures according to the effectiveness monitoring program described in Section 9.12 of the Application for Authorization, the key elements of which are described detail within the Proponent's "Fisheries and Aquatic Habitat Monitoring and Follow-up Plan". Any changes to the monitoring plans required by this Authorization shall be developed by the Proponent in consultation with DFO.
- 6.2 The implementation of the effectiveness monitoring program shall occur as per the schedule provided in Figure 12 of the Application for Authorization (attached as **Schedule D**). Any variance from this schedule shall only occur if deemed appropriate by DFO, at which time the Proponent shall provide an updated schedule to DFO.
- 6.3 The Proponent shall provide an annual effectiveness monitoring report to DFO which shall:
 - 6.3.1 Provide a detailed summary of the offsetting measures monitored during that calendar year, and an anticipated schedule of construction of offsetting measures and future monitoring activities associated with the offsetting measures;
 - 6.3.2 Provide a detailed report on the effectiveness of the implementation and functioning of each offsetting measure monitored, including dated photographs and inspection reports to demonstrate effective implementation and functioning of offsetting measures described above in 5.2 of this Authorization.
 - 6.3.3 Provide identification and photographic documentation of any environmental issues (e.g., potential non-compliance events) or impacts to fish and fish habitat that arose or occurred in relation to implementation or functioning of offsetting measures, and details of any associated measures that were implemented in response.
- 6.4 Provide an annual report summarizing the results of each individual monitoring program described within the Effectiveness Monitoring Program (i.e., from Section 9.12 of the Application for Authorization) per the specifications described for each monitoring program within the "Fisheries and Aquatic Habitat Monitoring and Follow-up Plan".

7. Supplementary measures

- 7.1 The extent, duration, and magnitude of effects on the aquatic ecosystem as the result of the proposed works, undertakings or activities are significant and have associated uncertainty in terms of outcomes. As a result, long term monitoring of the aquatic ecosystem will be necessary to inform appropriate adaptive management measures to ensure the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. As such, supplementary or other measures may be required should monitoring results indicate that the residual impacts to fish and fish habitat are greater than those that have been authorized and/or to address the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Therefore, taking into account the results of monitoring (i.e., Conditions 3, 4, and 6 above) and DFO's assessment of impacts to commercial, recreational or Aboriginal fisheries, DFO may require that the Proponent implement supplementary or other measures.



- 7.2 With the goal of supporting meaningful engagement and information sharing about the Project activities with Aboriginal groups (as defined under 'General Conditions'), the Proponent, in consultation with the Department of Fisheries and Oceans and Aboriginal groups with rights to harvest in the area affected by the authorized works, undertakings or activities, shall:
- 7.2.1 Collaborate with these Aboriginal groups to:
- i. develop, implement, and manage a plan to monitor the conditions in this Authorization;
 - ii. identify and develop ways to protect and improve aquatic species and their habitats, including additional mitigation measures to address impacts to current use of fisheries resources for traditional purposes; and
 - iii. share information about the Project activities with Aboriginal groups.
- 7.2.2 Establish committees and/or mechanisms for dialogue amongst the Proponent, Aboriginal groups, and the governments of Canada and British Columbia on additional ways to mitigate the impacts of the project;
- 7.2.3 Notify without delay Aboriginal groups of an occurrence that results in serious harm to fish or which poses a serious and imminent danger of such an occurrence, and which is not captured by this Authorization; and
- 7.2.4 Provide funds to Aboriginal groups to support their capacity to carry out conditions 7.2.1 to 7.2.3 above. Details on the implementation of this condition are to be discussed with DFO.
- 7.3 The supplementary or other measures described in 7.1 and 7.2 will be implemented within a time period and on a schedule determined in consultation with DFO.

Authorization Limitations and Application Conditions

The Proponent is solely responsible for plans and specifications relating to this authorization and for all design, safety and workmanship aspects of all the works associated with this authorization.

The holder of this authorization is hereby authorized under the authority of Paragraph 35(2)(b) of the *Fisheries Act*, R.S.C., 1985, c.F. 14 to carry on the work(s), undertaking(s) and/or activity(ies) that are likely to result in serious harm to fish as described herein. This authorization does not purport to release the applicant from any obligation to obtain permission from or to comply with the requirements of any other regulatory agencies.

This authorization does not permit the deposit of a deleterious substance in water frequented by fish. Subsection 36(3) of the *Fisheries Act* prohibits the deposit of any deleterious substances into waters frequented by fish unless authorized by regulations made by Governor in Council.

This authorization does not permit the killing, harming, harassment, capture or taking of individuals of any aquatic species listed under the *Species at Risk Act* (SARA) (s. 32 of the SARA), or the damage or destruction of residence of individuals of such species (s. 33 of the SARA) or the destruction of the critical habitat of any such species (s. 58 of the SARA).]

The failure to comply with any condition of this authorization constitutes an offence under Paragraph 40(3)(a) of the *Fisheries Act* and may result in charges being laid under the *Fisheries Act*.

This authorization must be held on site and work crews must be made familiar with the conditions attached.



This authorization cannot be transferred or assigned to another party. If the work(s), undertaking(s) or activity(ies) authorized to be conducted pursuant to this authorization are expected to be sold or transferred, or other circumstances arise that are expected to result in a new Proponent taking over the work(s), undertaking(s) or activity(ies), the Proponent named in this authorization shall advise DFO in advance.

Date of Issuance: _____

Approved by: _____

Rebecca Reid
Regional Director General
Pacific Region
Fisheries and Oceans Canada



Schedule A – Reference Documents

Application Form for Paragraph 35(2)(b) *Fisheries Act* Authorization (Normal Circumstances) completed by Brent Mossop of the British Columbia Hydro and Power Authority, and dated December 15, 2015.

DFO – Application for Authorization Dam Construction, Reservoir Preparation, and Filling, dated December 15, 2015 and produced for the British Columbia Hydro and Power Authority by Golder Associates Ltd., Ecofish Research Ltd., Limnotek Research and Development Inc., and BC Hydro.

Fisheries and Aquatic Habitat Management Plan, (Revision 1) produced for the British Columbia Hydro and Power Authority by Dave Hunter and Brent Mossop, and dated June 1, 2015.

Fisheries and Aquatic Habitat Monitoring and Follow-up Program: Site C Clean Energy Project, produced for the British Columbia Hydro and Power Authority by Dave Hunter, Brent Mossop, Dustin Ford, Eric Parkinson, Michael McArthur, and Don McCubbing, and dated December 22, 2015.

Site C Clean Energy Project, Dam Construction, Reservoir Preparation and Filling: Environmental Analysis of Physical Fish Habitat Offsets, produced by the British Columbia Hydro and Power Authority dated June 24, 2016.

Site C Clean Energy Project – Environmental Impact Statement (and Appendices), produced by the British Columbia Hydro and Power Authority, as amended July 19, 2013.

Technical Memorandum No. T009 – Site C Clean Energy Project – Temporary Upstream Fish Passage Recommended Alternative Summary Status Update. Included in the Water Licence Application for the Site C fish passage facilities (Application Tracking Number: 100125862), and provided via email to B. Naito, DFO in June 2015.

Technical Memorandum No. P009 - Site C Clean Energy Project – Permanent Upstream Fish Passage Recommended Alternative Summary Status Update. Included in the Water Licence Application for the Site C fish passage facilities (Application Tracking Number: 100125862), and provided via email to B. Naito, DFO in June 2015.



**Schedule B – Instream Construction Footprint of Project Components Likely to Result in Residual
Effects to fish and fish habitat**

Project Component	Footprint (ha)
North Bank Stage 1 Cofferdam (including isolated/dewatered area)	15.36
Diversion Inlet Cofferdam and Channel	4.65
Diversion Outlet Cofferdam and Channel	2.58
Stage 2 Cofferdams (including isolated/dewatered areas)	18.92
Earthfill Dam	0.16
RSEM L5	19.78
RSEM L6	2.26
Hudson's Hope Shoreline Protection	4.44
Highway 29 Realignment (east of Lynx Creek)	14.83
Moberly River Construction Bridge	3.37
Totals	86.35



Schedule C – Predicted changes to fish biomass upstream and downstream of the Site C Dam

TABLE 2: Short and longer term predictions of fish biomass (t) for pre-project (Peace River from Peace Canyon Dam to the dam site) and post-project (Site C Reservoir) conditions. Fish biomass is presented for the “Most Likely” scenario.

Group	Species Name	Current (Pre-Project) biomass (river) (t)	SHORT TERM (IN 10 YRS)				LONGER TERM (> 30 YRS)			
			Post-project biomass (Reservoir) (t)				Post-project biomass (Reservoir) (t)			
			Most Likely	Range (min - max)			Most Likely	Range (min - max)		
1	Walleye	0.15	0	0	-	0	0	0	-	0
1	Lake Trout	0	0.03	0.01	-	0.04	0.04	0.01	-	0.06
1	Rainbow Trout	1.64	1.93	1.29	-	2.58	1.93	1.34	-	2.58
1	Northern Pike	0.09	0.23	0.12	-	0.46	0.46	0.12	-	0.93
1	Burbot	0.01	0.05	0.02	-	0.1	0.1	0.05	-	0.1
	Group 1 Subtotal	1.89	2.24	1.44	-	3.18	2.53	1.52	-	3.67
2	Bull Trout	2.97	3.07	1.35	-	4.37	5.52	1.76	-	6.96
2	Arctic Grayling	1.28	0	0	-	0.1	0	0	-	0.1
2	Mountain Whitefish	11.07	0.79	0.16	-	1.58	0.79	0.17	-	1.58
	Group 2 Subtotal	15.32	3.87	1.51	-	6.05	6.31	1.92	-	8.64
3	Kokanee	0.08	11.2	3.36	-	14.56	22.4	6.72	-	29.13
3	Lake Whitefish	0	0.53	0.34	-	0.93	0.11	0.02	-	0.43
	Group 3 Subtotal	0.08	11.73	3.7	-	15.49	22.51	6.74	-	29.55
	Total Harvestable Fish Biomass	17.29	17.84	6.64	-	24.72	31.35	10.19	-	41.85
4	Suckers	8.19	25.23	10.09	-	50.46	25.24	11.11	-	50.46
4	Small Fish	0.38	1.23	0.49	-	2.46	1.23	0.53	-	2.46
4	Northern Pikeminnow	0.49	0.12	0.04	-	0.2	0.12	0.04	-	0.2
	Group 4 Subtotal	9.06	26.58	10.63	-	53.13	26.59	11.68	-	53.13
	Total Fish Biomass	26.35	44.42	17.27	-	77.85	57.94	21.87	-	94.98



TABLE 3: Short and longer term predictions of fish biomass (t) for pre- and post-Project conditions for the Peace River from the Project to Many Islands, AB. Fish biomass is presented for the "Most Likely" scenario.

Group	Species Name	Current (Pre- Project) biomass (river) (t)	SHORT TERM (IN 10 YRS)				LONGER TERM (> 30 YRS)			
			Post-project biomass (Peace River Downstream of Site C Dam) (t)				Post-project biomass (Peace River Downstream of Site C Dam) (t)			
			Most Likely	Range (min - max)			Most Likely	Range (min - max)		
1	Walleye	3.38	1.69	0.34	-	1.69	1.69	0.34	-	1.69
1	Lake Trout	0	0	0	-	0.01	0	0	-	0.01
1	Rainbow Trout	0.17	0.35	0.17	-	0.35	0.35	0.17	-	0.35
1	Northern Pike	0.74	0.37	0.37	-	0.74	0.37	0.37	-	0.74
1	Burbot	0.1	0.05	0.01	-	0.05	0.05	0.01	-	0.05
	Group 1 Subtotal	4.39	2.46	0.89		2.83	2.46	0.89		2.83
2	Bull Trout	1.49	1.23	1.23	-	2.54	1.23	1.23	-	2.54
2	Arctic Grayling	0.64	0.32	0.06	-	0.64	0.32	0.06	-	0.64
2	Mountain Whitefish	7.38	14.74	14.74	-	14.74	14.74	14.74	-	14.74
	Group 2 Subtotal	9.5	16.29	16.03		17.91	16.29	16.03		17.91
3	Kokanee	0.03	0.01	0	-	0.02	0.03	0.01	-	0.04
3	Lake Whitefish	0	0.01	0	-	0.01	0	0	-	0.01
	Group 3 Subtotal	0.03	0.02	0.01		0.03	0.03	0.01		0.04
	Total Harvestable Fish Biomass	13.93	18.77	16.94	-	20.78	18.78	16.94	-	20.79
4	Suckers	21.74	10.87	10.87	-	10.87	10.87	10.87	-	10.87
4	Small Fish	0.87	0.7	0.43	-	0.87	0.7	0.43	-	0.87
4	Northern Pikeminnow	0.87	0.44	0.26	-	0.52	0.44	0.26	-	0.52
	Group 4 Subtotal	23.49	12.01	11.57		12.27	12.01	11.57		12.27
	Total Fish Biomass	37.42	30.78	28.5	-	33.05	30.79	28.5	-	33.06

Schedule D – The Proponent’s Offset Plan Implementation Schedule

Site C Clean Energy Project	2015		2016		2017		2018		2019		2020		2021		2022		2023		2024 - 2053	
	Year 1		Year 2		Year 3		Year 4		Year 5		Year 6		Year 7		Year 8		Year 9		Year 1 - 30	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Dependent Milestones																				
Construction - Major Components																				
Offset Measures																				
Peace River Channel Contouring and Side Channel Enhancement																				
Reservoir Shoreline Enhancement																				
Hudson's Hope Shoreline Protection Enhancement																				
Dam Site Material Relocation Site Enhancement																				
Reservoir Shoreline Riparian Planting																				
Fisheries and Aquatic Habitat Monitoring and Follow-up Programs																				
Site C Construction Phase Monitoring - Peace River Downstream of Site C Dam																				
Site C Operations Phase Monitoring - Peace River Downstream of Site C Dam																				
Site C Construction Phase Monitoring - Peace River Upstream of Site C Dam																				
Site C Operations Phase Monitoring - Site C Reservoir																				
Tributary Mitigation Opportunities Evaluation Program																				
Arcic Graveling Monitoring																				
	2015		2016		2017		2018		2019		2020		2021		2022		2023		2024 - 2053	
	Year 1		Year 2		Year 3		Year 4		Year 5		Year 6		Year 7		Year 8		Year 9		Year 1 - 30	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Construction																				
Operation																				



Fisheries and Oceans
Canada

Regional Director General
Pacific Region
Suite 200 - 401 Burrard Street
Vancouver, British Columbia
V6C 3S4

Pêches et Océans
Canada

Directrice générale régionale
Région du Pacifique
Pièce 200 - 401 rue Burrard
Vancouver (C.-B.)
V6C 3S4

Your file Votre référence

Our file Notre référence
15-HPAC-01160

s.19(1)

British Columbia Hydro and Power Authority
Four Bentall Centre, 1100-1055 Dunsmuir Street
PO BOX 49260
Vancouver, BC V7X 1V5

Dear [REDACTED]

**Subject: Processing of Application for a Paragraph 35(2)(b) *Fisheries Act*
Authorization is Resumed**

As you are aware, on January 25, 2016, the 90-day time limit within which a decision with respect to your application must be made was ceased for the following reason:

Pursuant to paragraph 8(1)(d) of the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*, consultation is required with Aboriginal groups potentially affected by a decision under paragraph 35(2)(b) of the *Fisheries Act*.

Please be advised that the Fisheries Protection Program (the Program) of Fisheries and Oceans Canada is notifying you that the processing of your application for a paragraph 35(2)(b) *Fisheries Act* authorization has resumed on July 27, 2016 as per paragraph 8(3)(c) of the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*.

If your plans have changed or if the description of your proposal is incomplete, you should contact this office to avoid any unnecessary delays in the review of your application.

If you have any questions, please contact Brian Naito by phone at 604-790-4260 or by e-mail at Brian.Naito@dfo-mpo.gc.ca. Please refer to file number 15-HPAC-01160 when corresponding with the Program.

Yours sincerely,

Rebecca Reid
Regional Director General

Canada



Fisheries and Oceans
Canada

Pacific Region
200 – 401 Burrard Street
Vancouver, British Columbia
V6C 3S4

Pêches et Océans
Canada

Région du Pacifique
Pièce 200 – 401 rue Burrard
Vancouver (C.-B.)
V6C 3S4

July 27, 2016

Your file *Votre référence*

3834

Our file *Notre référence*

15-HPAC-01160

s.19(1)

Nun wa dee Stewardship Society
9824 98A Avenue
Fort St. John, BC V1J 1S2

Attention: [REDACTED]

**Subject: Regulatory Review of BC Hydro's application regarding the Site C Clean Energy
Project Main Civil Works and Facility Operations**

Dear [REDACTED]

Thank you for your letters dated July 15, 16, and 17, 2016 and for the July 20, 2016 letter from Chiefs Willson and Tsakoza regarding the Site C Project. Fisheries and Oceans Canada (DFO) is appreciative of the feedback provided by the Nun wa dee Stewardship Society (Nun wa dee) to-date. I would also like to thank the Chiefs of West Moberly First Nations and Prophet River First Nation for meeting with the Minister of Fisheries, Oceans and the Canadian Coast Guard on July 18, 2016.

In your July 15, 2016 letter, you request that DFO provide a Preliminary Impact Assessment. DFO has relied on the depth of consultation assessment conducted by the Canadian Environmental Assessment Agency (CEAA) in the Crown Consultation and Accommodation Report, to inform the strength of claim for asserted or established Aboriginal rights and the seriousness of the potential impacts for a contemplated Crown action to adversely impact those claims. DFO's depth of consultation assessment places Prophet River First Nation (PRFN) and West Moberly First Nations (WMFN) on the high end of the consultation spectrum. DFO's has therefore been discharging its duty to consult with PRFN and WMFN in accordance with this assessment.

Your letter dated July 16, 2016 refers to inaccuracies and omissions in DFO's letter dated July 7, 2016, specifically referencing the June 17, 2016 meeting that occurred between DFO and Nun wa dee in Fort St. John. DFO is unaware of specific inaccuracies and/or omissions in our July 7, 2016 letter, and once again requests a copy of the video made by Nun wa dee during the June 17, 2016 meeting for our records. The video serves as a complete record of what transpired in the meeting, and will help us better understand the inaccuracies and omissions referenced in your July 16, 2016 letter.

.../2

Canada

In your July 17, 2016 letter and the July 20, 2016 letter provided by the Chiefs of PRFN and WMFN to the Minister of Fisheries and Oceans Canada, several issues and concerns are outlined relating to the Site C Project. Many of these issues were identified during the Environmental Assessment review phase and discussed by the Joint Review Panel in their Report. DFO understands that these issues were largely addressed during the Environmental Assessment for the Site C Project and, specifically, by the BC Environmental Assessment Office in the Conditions of the BC Environmental Assessment Certificate (BC EAC) and by CEAA in the Conditions of the federal Decision Statement.

DFO acknowledges all the important issues you have raised in your recent letters and the outstanding concerns that remain an issue for PRFN and WMFN. We have considered these issues in completing our review of BC Hydro's regulatory application, and are now of the view that consultation on the Application with the Nun wa dee is concluded. We would however like to maintain an ongoing dialogue with you in relation to opportunities through which Nun wa dee can be involved in supporting future decision-making around Project elements such as fish habitat offsetting, the outcomes of BC Hydro's adaptive management program, and the design and implementation of BC Hydro's fish and fish habitat monitoring programs.

We would appreciate an opportunity to discuss with you at a future date the nature and development of a process for carrying on such a dialogue. As we have previously noted, the input provided by Aboriginal groups to-date during consultation activities on BC Hydro's regulatory application has been invaluable in furthering the Department's technical review and understanding of the Project effects on fish and fish habitat. We would appreciate the opportunity to continue such a dialogue over the longer-term to ensure that the best available information is provided for the Site C project.

Once again, thank you for your feedback and for meeting with the Minister. Based on DFO's detailed review of BC Hydro's *Fisheries Act* S.35(2)(b) application for Site C Clean Energy Project Main Civil Works and Facility Operations and on the feedback received through consultations with potentially affected First Nations, DFO has issued a *Fisheries Act* authorization for the Project.

If you have any questions, please contact me by phone at 604-790-4260 or by email at brian.naito@dfo-mpo.gc.ca. Please refer to the file number referenced above when corresponding with DFO.

Sincerely,



Brian Naito
Senior Fisheries Protection Biologist
Fisheries Protection Program

s.19(1) cc: Chief Willson, West Moberly First Nations
Chief Tsakoza, Prophet River First Nation
Chief Parentau, Salteau First Nation
J. Richert, Nun wa dee Stewardship Society
West Moberly First Nations
Prophet River First Nation
T. Martin, Transport Canada (tanya.martin@tc.gc.ca)
C. Parkinson, Transport Canada (colin.parkinson@tc.gc.ca)

From: Fanos, Brad
Sent: Thursday, July 28, 2016 11:33 AM
To: Mercier, Liliane
Subject: 2016-07-27_BN for Site C Authorization decision Final.doc
Attachments: 2016-07-27_BN for Site C Authorization decision Final.doc

This is the final with the edit I mentioned



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Regional Director,
Ecosystems Management Branch
Pacific Region

Directrice régionale
Direction des écosystèmes
Région du Pacifique

UNCLASSIFIED

2016-XXX-00XXX
EKME #: XXXXXXXX

MEMORANDUM FOR THE REGIONAL DIRECTOR GENERAL

**SITE C CLEAN ENERGY PROJECT
DECISION TO ISSUE *FISHERIES ACT*, PARAGRAPH 35(2)(b) AUTHORIZATION
FOR
SITE C MAIN CIVIL WORKS AND FACILITY OPERATIONS
(FOR DECISION)**

s.21(1)(b)

SUMMARY

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project), the third hydroelectric dam in a series of dams on the Peace River in northeast BC.

In October 2014, the federal Minister of Environment issued a Decision Statement for the federal environmental assessment with legally binding conditions enabling the Project to proceed to the regulatory permitting stage. In September 2015, the Proponent initiated site preparation construction activities for the Project after receiving a *Fisheries Act* authorization for specific site preparation works, activities and undertakings.

On December 15, 2015, the Proponent submitted to Fisheries and Oceans Canada (DFO) a second Application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for facility operations.

DFO initiated a regulatory review of the second Application pursuant to the *Application for Authorization under Paragraph 35(2)(b) of Fisheries Act Regulations* and consistent with existing Fisheries Protection Program policies and operational procedures, including conduct of Indigenous consultations and the consideration of the factors set out in *Fisheries Act* Section 6.

Over a 7 month period, DFO conducted consultations with potentially affected Indigenous groups, making meaningful efforts to provide opportunities for input on the current application and responding to all Indigenous groups that have provided comments. In consideration of the efforts made to engage Indigenous groups, the Department's responses to the issues raised by the groups, [REDACTED] the

Department is concluding consultation for the purpose of making a regulatory decision.

The Department has coordinated with Transport Canada during federal Indigenous consultation activities and is working with Transport Canada to coordinate timing, legal advice and media lines on the issuance of our respective authorization/approvals. DFO has also considered consultation and accommodation efforts made by the province during the water licence application review, and information provided by BC Hydro in relation to their consultation and accommodation efforts.

A decision whether to issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act* is required. Given the closure of consultation, and the conclusion of DFO's review of the application, it is recommended that the Regional Director General issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act*.

DECISION RATIONALE

The Project:

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project) - the third hydroelectric dam in a series of dams on the Peace River in northeast BC. The Project is estimated to have a capital cost of \$8.3 billion and create approximately 8,000 person-years of employment. The Proponent also contends that the Project will provide clean, reliable and affordable electricity for 450,000 homes per year for more than 100 years. As proposed, the Project will be an earth fill dam, approximately 1,050 metres in length, and 60 metres high above Peace River. Reservoir creation will result in approximately 83 kilometres of the Peace River being flooded to two to three times the current width.

Environmental Assessment:

A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*.

DFO provided advice in the environmental assessment (EA) on project impacts to fish and fish habitat of the Peace River. DFO Science Branch was engaged to provide advice which resulted in two Canadian Science Advisory Secretariat (CSAS) Science Responses, one that reviewed the downstream boundary for project fish and fish habitat effects and the other providing a technical review of project effect to fish and fish habitat in the Peace River.

The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for First Nations represented by the Treaty 8 Tribal Association and that these effects cannot be mitigated (**Attachment 1**). The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances.

.../3

In October 2014, the federal Minister of Environment issued a Decision Statement with legally binding conditions (**Attachment 2**). The Canadian Environmental Assessment Agency is responsible for monitoring the compliance of BC Hydro with the Decision Statement conditions.

In November 2014, West Moberly First Nations, Prophet River First Nation and Doig River First Nation filed an application for judicial review in Federal Court challenging the Minister of the Environment's Decision Statement and the GiC's justification decision (the Doig River First Nation eventually withdrew). In August 2015, the Federal Court dismissed the application for judicial review on the basis that the Crown had met its duty to consult and accommodate and that, having met this duty, there was no requirement on the part of the Governor in Council to determine if the Project unjustifiably infringes their section 35 treaty rights. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal and a one-day hearing has been set for September 14, 2016 in Montreal. The focus of the appeal is to determine if the Applications Judge was correct in concluding that the Governor in Council was not required to determine the infringement of the Appellants' treaty rights in making its decision pursuant to s. 52(4) of *CEAA 2012*.

Regulatory Review Process:

On September 30, 2015, Fisheries and Oceans Canada (DFO) issued a *Fisheries Act* authorization to BC Hydro for the site preparation works for the Project.

On December 15, 2015, BC Hydro submitted a second Application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for facility operations. The *Application for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*, defines the application process, information requirements and timelines for making decisions.

On January 25, 2016, the Application was deemed complete. However, the 90-day regulated time limit within which a decision must be made on the application ceased to apply under paragraph (8)(1)(d) *Application for Authorization under Paragraph 35 (2) (b) of the Fisheries Act Regulations*, as Indigenous consultations are required before a decision is made. Concurrent with the Indigenous consultation activities, the Department continued its review of the application following existing Fisheries Protection Program policies and operational procedures.

The Site C Application for Authorization for construction of the main civil works and for facility operations was reviewed thoroughly by DFO staff and it was confirmed that the Project has works, undertakings or activities that will result in serious harm to fish (**Attachment 3**) requiring a decision for authorization under the *Fisheries Act*. The serious harm to fish likely to result from the proposed works, undertakings, or activities include:

1. Effects on fish habitat:

- Instream construction footprints of physical structures (dam foot print and coffer dams during construction), and estimated at a total of 86.35 ha.
- Interim changes to fish habitat from River Diversion will result in the creation of a headpond and alter riverine fish habitat along approximately 18 km of the Peace River upstream of the dam site, including the confluences of Peace River tributaries within this reach. This will be followed by filling and creation of the Site C Reservoir, which

.../4

will result in inundation of approximately 2,800 ha of mainstem lotic habitat and 163 ha of tributary lotic habitat. The net residual serious harm to fish associated with filling of the Reservoir is difficult to quantify however, changes to fish habitat are anticipated to result in the loss of Arctic Grayling and a significantly depressed population of Peace River Mountain Whitefish.

- Construction of the Site C dam will shift the existing point of flow regulation (i.e., at the outlet of the Peace Canyon dam) by a distance of approximately 85 km downstream, and therefore increase the daily range of flows downstream of the Site C dam. During Facility Operation, daily flow regulation (predicted to range between 1.0-1.5 m) will result in repeated dewatering of some fish habitat along the river margins downstream of the Site C dam. This effect of flow regulation on fish habitat is anticipated to diminish downstream of the Pine River confluence, due to significant flow contributions from the Pine River and the Beatton River further downstream.

2. Effects to fish health and survival:

- Creation of the diversion headpond during River Diversion, and the subsequent filling and creation of the Site C Reservoir, is anticipated to result in the loss of distinct groups of fish that inhabit the existing riverine environment (e.g., Arctic Grayling and River Mountain Whitefish).
- Stranding of fish and fish eggs is anticipated in the Peace River during River Diversion, as the diversion headpond is to be repeatedly dewatered.
- Fish entrained through the diversion tunnels during River Diversion and through the modified diversion tunnel during Reservoir Filling is likely to result in death of fish.
- Fish entrained through the generating station during Reservoir Filling and Operations are anticipated to have size-dependent survival rate estimated at approximately 60% for large fish.
- Fish entrained through the spillways during Reservoir Filling and Facility Operations are anticipated to have a high rate of survival (likely >95%).
- Fish will be entrained through the generating station and spillways during Facility Operation. Annual entrainment rates were modelled by BC Hydro in its Fish Passage Management Plan to be <10% for the population for all fish species except for bull trout, kokanee, lake whitefish and lake trout. However, due to the fundamental changes in the aquatic ecosystem as a result of the creation of the reservoir fish movement patterns and entrainment risk may be greater.
- Potential stranding of fish downstream of the dam site during Facility Operation due to flow regulation. Effects on fish from stranding are anticipated to occur largely in the reach between the dam site downstream to the Pine River, as the effects of flow regulation are anticipated to attenuate with inflows from the Pine River and the Beatton River further downstream.
- Potential stranding of fish in the reservoir during Facility Operation.
- Incidental mortality of fish during upstream fish passage by means of the temporary and permanent trap and haul facilities and associated sorting, sampling, transport and release. The acceptable level of incidental mortality is to be no more than 5% of the total number fish captured by the trap and haul facilities and associated sorting, sampling, transport, and release on an annual basis.

.../5

3. Effects on fish movement:

- During River Diversion, Reservoir Filling, and Facility Operation upstream fish movement at the dam site will be blocked, and in combination with the anticipated habitat changes in the reservoir, will contribute to the decline of Arctic Grayling and Mountain Whitefish.

Fisheries Act Authorization

Under Paragraph 35(2)(b) of the *Fisheries Act* the Minister has the authority to authorize works undertaking or activities that cause serious harm to fish. The Authorization has been developed following a consistent national template and includes a series of enforceable conditions that the Proponent is required to follow. The conditions of authorization are set out with the objective of providing for the sustainability and ongoing productivity of the fisheries, and are focused on mitigation measures to avoid and reduce avoid serious harm, offsetting measures to counter balance serious harm to fish and monitoring conditions to ensure appropriate information is collected and provided to DFO to track compliance and effectiveness of the various mitigations and offsets, and potential accommodation of impacted Indigenous groups.

Mitigation measures that are practically feasible to mitigate serious harm to fish are included as conditions of the proposed Site C authorization. Monitoring by the Proponent to ensure mitigation measures are being implemented and are mitigating serious harm to fish is also a condition of the authorization.

As there will be serious harm to fish after the application of avoidance and mitigation measures, the Proponent has developed a plan to undertake offsetting measures, the compliance of which will be secured through conditions to the authorization. The offsetting plan aims to enhance fish habitat and contribute to the Fisheries Management Objectives (FMO), particularly for those fish species identified as high value target species for anglers in the provincial FMOs. Offsetting measures to be undertaken will include:

- Peace River Channel Contouring and Side Channel Enhancement, which will:
 - increase the amount of available, permanently wetted habitat for fish.
 - provide rearing, feeding, overwintering, and potential spawning habitats for fish.
 - reduce channel dewatering and potential fish stranding risk in the area; and
 - support a variety of life stage uses for local fish populations by increasing the complexity and variability of fish habitat.
- Site C Reservoir Enhancement, which will:
 - increase the area of shallow water habitat, providing a diversity of habitats including backwater habitat.
 - support development of aquatic vegetation and riparian habitat, at select sites along the reservoir shoreline.

Complementary measures are investments in data collection and scientific research related to maintaining or enhancing the productivity of commercial, recreational or Aboriginal fisheries. In areas where there are limited opportunities for measures to offset fisheries productivity losses and where there is limited understanding or data on fisheries populations, complementary measures may be considered in addition to other offsetting measures. These measures are included as a condition of the authorization for Site C for Arctic grayling. The Project is anticipated to result in

.../6

the loss of the Arctic Grayling population upstream of the proposed dam, so opportunities to offset these fisheries productivity losses upstream of the dam site do not exist. Complementary measures including Arctic grayling data collection/scientific research studies will be undertaken by the Proponent as a condition of the authorization in a variety of areas with the goal of enhancing the productivity of Arctic grayling downstream of the dam. Information will also be collected to identify and assess the likely effectiveness of habitat enhancement activities for Arctic grayling. After the results of the scientific and technical studies are completed, options for implementation of fish habitat enhancements will be considered.

Indigenous Consultation:

When making a regulatory decision to authorize works, undertakings or activities under Paragraph 35(2)(b) of the *Fisheries Act* DFO is required to conduct Indigenous consultations with groups that are potentially affected by the proposed project (for detailed description of Indigenous groups refer to Appendix 1, Attachment 6). DFO has undertaken Indigenous Consultation on the Application with the following potentially affected Indigenous Groups identified as being owed a high duty for consultation:

- Dene Tha' First Nation (letter of support for Project received)
- Duncan's First Nation (letter of support for Project received)
- McLeod Lake Indian Band (letter of support for Project received)
- Horse Lake First Nation (no engagement with DFO)
- Kelly Lake Métis Settlement Society (no engagement with DFO)
- Métis Nation of British Columbia (no engagement with DFO)
- Blueberry River First Nations (engagement with DFO)
- Doig River First Nation (engaged with DFO)
- Halfway River First Nation (engaged with DFO)
- Prophet River First Nation (engagement with DFO via Nun wa dee Stewardship Society)
- West Moberly First Nations (engaged with DFO via Nun wa dee Stewardship Society)
- Sauteau First Nations (engagement with DFO)

The high depth of consultation owed to these potentially affected Indigenous groups was determined by the Canadian Environmental Assessment Agency during the EA phase, and this depth assessment was carried forward by DFO and applied to regulatory applications for the Site C Project received by the Department since conclusion of the EA.

Following receipt of the Application on December 22, 2015, DFO sent a letter along with BC Hydro's Application enclosed to the potentially affected Indigenous Groups identified above. DFO requested their views on the proposed works, undertakings or activities described in the Application, and any comments they may have regarding potential impacts to fish and fish habitat, and on asserted or established Indigenous or Treaty rights. The letter also offered the opportunity to meet to discuss the BC Hydro application and offsetting plan, and support DFO's review prior to a regulatory decision on the Application. In some cases, Indigenous groups were very responsive and accepted DFO's request to meet and discuss the regulatory application, while in other cases, Indigenous groups either responded in writing to express their views or did not

.../7

respond. DFO followed up with additional letters when no response was received, and was very responsive to requests to meet and/or provide information and clarification on issues raised.

Between December 2015 and July 2016, the Department made concerted efforts to consult with the potentially affected Indigenous groups, to provide meaningful opportunities for input on the current application, carry out a dialogue on issues of concern to Indigenous groups, and to provide timely responses to all Indigenous groups that provided comments (**Attachment 4**).

West Moberly First Nations and Prophet River First Nation are Treaty 8 First Nations represented collectively by the Nun wa dee Stewardship Society (the Nun wa dee), an entity which reviews regulatory applications on behalf of these groups. Salteau First Nations, which is also a Treaty 8 signatory, requested that consultation on the Application with their community also be channelled through the Nun wa dee. Engagement with these three groups via the Nun wa dee did not initiate until March 22, 2016, despite multiple efforts by DFO. Consultation engagement with the Nun wa dee on BC Hydro's Application has been complex largely due to outstanding litigation in the Federal Court of Appeal in relation to the Federal Environmental Decision Statement allowing the Project to proceed. This litigation was brought forward by West Moberly First Nations and Prophet River First Nation, and the court case is anticipated to be heard in September 2016.

West Moberly First Nations and Prophet River First Nation have requested that DFO and Transport Canada (TC) cease processing of all regulatory applications and associated consultation, pending the court's decision. Through written correspondence with these two groups, the former Minister indicated that DFO will not put a decision on issuance of the *Fisheries Act* authorization on hold, and on July 18, 2016, Minister Leblanc met with West Moberly First Nations Chief Roland Willson and Prophet River First Nation Chief Lynette Tsakoza to discuss their concerns regarding the Site C Project.

Blueberry River First Nation has engaged with DFO in discussing BC Hydro's Application, and expressed concerns broader than the regulatory application at hand (i.e. cumulative effects, reconciliation, etc.). DFO was able to engage in deep consultation with Doig River First Nation and McLeod Lake Indian Band, who provided a detailed technical review of BC Hydro's Application and commented on DFO's Draft Conditions of Authorization. Halfway River First Nation met with DFO in March 2016 to discuss the Application, and expressed concerns related to BC Hydro's trap and haul program and changes to the fish community as a result of the creation of the Site C reservoir. DFO responded to these concerns in writing providing baseline information on the Peace River fish community and detailed information on BC Hydro's trap and haul program as requested by Halfway River First Nation. Dene Tha' First Nation had a lower level of engagement with DFO expressing concerns via written correspondence related to methylmercury, which DFO addressed in written responses to this Indigenous Group.

The Duncan's First Nation, Dene Tha' First Nation and McLeod Lake Indian Band have all expressly provided DFO with a letter of support for the Project, while Horse Lake First Nation, Kelly Lake Métis Settlement Society, and the Métis Nation British Columbia have not engaged with DFO after multiple rounds of follow-up correspondence.

s.21(1)(b)
s.23

Details of BC Hydro's engagement with these high depth of consultation Indigenous groups and accommodations measures are set out in The BC Rationale regarding Main Water Licence
(**Attachment 6**)

DFO recognizes the large scale ecosystem transformation in the Peace River that will occur as a result of the construction and operation of the Site C dam as well as the uncertainty in outcomes related to the final assemblage of fish species, overall biomass and populations in the reservoir, its tributaries and in the Peace River downstream, post dam construction. In addition, the Department acknowledges the important concerns raised by Indigenous groups and specifically the residual impacts to the fishing opportunities and practices resulting from the construction and operation of the Project.

The extent, duration, and magnitude of effects on the aquatic ecosystem as the result of the proposed works, undertakings or activities are significant, and the response of the aquatic ecosystem and associated biota to the transformation of a portion of the Peace River into a reservoir is uncertain. As such, supplementary and other measures may be required should monitoring results indicate that the residual impacts to fish and fish habitat are greater than anticipated in the Application for Authorization and/or to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

In an effort to minimize impacts to asserted or established Indigenous or Treaty rights (e.g., fishing opportunities and practices), and to fish and fish habitat, DFO is relying on a variety of measures and actions, that have been informed by Indigenous consultation including:

- 1) **Fisheries Act Authorization** conditions which require avoidance, mitigation, monitoring, offsetting, and supplementary measures to ensure the sustainability and ongoing productivity of the fishery, and long-term monitoring and adaptive management measures to address uncertainty in the future state of the fish community (**Attachment 5**);
- 2) **Condition 7** has been included in the *Fisheries Act* Authorization to enable supplementary and other measures to be required should there be greater impacts than anticipated and/or to address the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Condition 7.2 specifically identifies mandatory measures aimed at supporting meaningful engagement and information sharing with Indigenous groups in relation to Project activities.
- 3) **The BC Water Licence permit conditions** requiring mitigation measures, long term monitoring and adaptive management, and offsetting measures in addition to a compensation fund and supplementary measures, to ensure the sustainability and ongoing productivity of the fishery, (**Attachment 6**);
- 4) **The BC Environmental Assessment Certificate conditions** (**Attachment 7**)
- 5) **The federal CEAA decision statement conditions** (**Attachment 2**)

.../9

s.19(1)

- 6) **Existing and ongoing offers by BC Hydro and the BC Government** related to accommodation and other measures to address potential infringements on Indigenous Treaty rights, as outlined in the BC Rationale regarding the Main Water Licence (**Attachment 6**); and
- 7) **DFO intent for ongoing dialogue with Indigenous groups** related to adaptive management decisions related to this project. In light of the limited engagement in relation to potential accommodation measures, an explicit opportunity to continue DFO's engagement with potentially affected Indigenous groups to develop a respectful and collaborative process, and to dialogue on future monitoring and adaptive management measures to ensure the sustainability and ongoing productivity for CRA fisheries (including addressing residual impacts to fishing rights and practices).

Fisheries Act Section 6 Considerations:

Prior to making a decision on Authorization under Paragraph 35(2)(b) of the *Fisheries Act* the Minister must consider the 4 factors set out in section 6 of the *Fisheries Act*. The Checklist for Consideration of the Factors set out in Section 6 of the *Fisheries Act* has been completed (**Attachment 8**) and is summarized below:

1. **The contribution of the fish to the ongoing productivity of CRA fisheries.** In the review of the Project, DFO has assessed project impacts to those fish species that are part of the recreational and Aboriginal fishery (at present there is no commercial fishery in the project area);
2. **Fisheries management objectives.** In the review of the Project, DFO has considered the provincial fish objectives for the project area. The Department's goal is "... to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries" as set out in the *Fisheries Protection Policy Statement* (2013). The province of BC through delegated authority under the *Fisheries Act* has responsibility for the province's freshwater species. In this capacity, the BC Ministry of Environment is responsible for managing the fisheries of the Peace River watershed. The BC Ministry of Environment has developed the following FMO document which applies in the project area: *Ministry of Environment Fish and Wildlife Interim Objectives for the Site C Project Area Draft 2009* updated as per the December 7, 2015 Memo from [REDACTED] Ecofish Research Ltd. to Mr. Ted Down of the Ministry of Environment of British Columbia with the subject "RE: Site C fish objectives conclusion from MOE/FLNRO workshop 25 Nov 2015 – Draft". In summary the overall objectives for fish in the lower Peace Region are: a) Maintaining Ecosystem Integrity and Productivity; and b) Sustainable Use.

The Project will result in an aquatic ecosystem transformation from a riverine to reservoir environment. This will change the system from a shallow fast flowing river to a large deep slow flowing lake-like waterbody. This large scale biophysical change will result in cascading changes throughout the aquatic community, affecting productivity of invertebrates, forage fish species, and larger piscivorous species of value to recreational and Aboriginal fisheries (note: there is no commercial fishery). Over the 10 year period after Project completion, the Project is predicted to result in increased biomass for fish species such as Bull Trout, Kokanee, Rainbow Trout, and Lake Trout and decreased

.../10

biomass for other fish species such as Mountain Whitefish, Arctic Grayling and Walleye. Arctic grayling and mountain whitefish are predicted to be eliminated from the reservoir due to their life history requirements that are not compatible with the reservoir environment. Downstream of the dam site, these species will continue to exist; specifically, mountain whitefish biomass is predicted to increase, while Arctic grayling and Walleye biomass is anticipated to be reduced. Overall, while the fish community composition will change, fish biomass is predicted to increase post-project. Significant increases in kokanee biomass are expected to be the major contributor to the overall increase in fish biomass in the reservoir, and this species will serve as an important forage fish for other larger CRA fish species like Bull trout, Rainbow trout, burbot and Lake trout, which are expected to increase in the reservoir environment.

The overall increases in fish biomass resulting from the reservoir transformation will be consistent with the fisheries management objectives as stated above. Importantly, the aquatic ecosystem transformation associated with the change from a riverine to reservoir environment is likely to have a far greater bearing on the achievement of the fisheries management objectives than the proposed avoidance, mitigation and offsetting measures. Therefore, the monitoring programs and adaptive management proposed by BC Hydro are crucial in identifying and informing whether the future fish community in the reservoir and downstream of the dam occurs in line with FMOs. Given this uncertainty, contingency offsetting, adaptive management processes, and supplementary measures are included as Conditions of the Authorization with the aim of ensuring the long-term sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

DFO, BC Hydro and the Province of BC are participating in a Site C Fisheries and Aquatic Habitat Mitigation and Monitoring Technical Committee with the aim of ensuring that project effects and associated monitoring, mitigation, and offsetting occur in line with fisheries management objectives. Under the terms of reference, Indigenous groups may be invited to be a part of the Technical Committee to support the ongoing implementation of mitigation and monitoring plans.

While the Project will result in an aquatic ecosystem transformation from a riverine to reservoir environment and associated changes in the fish community and fish biomass in the reservoir, as noted above, that may affect fishing opportunities for First Nations, these opportunities will continue to exist during construction and after completion of the Project. Although some fishing opportunities such as river shore fishing and/or preferred fish species such as Arctic grayling and mountain whitefish will no longer be available within the reservoir, these fishing opportunities for preferred species will continue to exist downstream of the reservoir, and new fishing opportunities for First Nations will be created in the reservoir for preferred species such as bull trout and less-preferred species such as kokanee and lake trout.

3. **Whether there are measures and standards to avoid, mitigate or offset serious harm to fish that are part of a CRA fishery, or that support such a fishery.** Measures to avoid serious harm to fish were incorporated into the project design and location of project elements. Measures to mitigate and offset serious harm to fish will be

.../11

implemented and are required as conditions of the Fisheries Act, paragraph 35(2)(b) authorization. A detailed outline of the mitigation, monitoring and offsetting measures have been presented earlier in this rationale.

4. **The public interest.** The public were provided the opportunity to comment as part of the environmental assessment of the Project. No public consultation was conducted during the regulatory phase as there is no requirement to do so. However, the public has taken the opportunity to express their views and/or concerns in letters to the Minister and other senior departmental officials. To date, it appears that concerns expressed by the public are not new and have been considered when the conditions in the federal Decision Statement as well as the conditions in the BC Environmental Assessment Certificate for the Site C Project were developed.

DFO is aware of three topics that have been expressed for the Project relating to the public interest: 1) increases in methylmercury in fish, 2) the effectiveness of the fish passage management plan, and 3) impacts to certain recreational and Aboriginal fisheries.

With regard to concerns raised regarding methylmercury, fish consumption and human health effects, these concerns are addressed by Condition 13 of the federal Decision Statement which contains measures the Proponent must follow to address this issue.

With regard to the fish passage, the Proponent will be undertaking effectiveness monitoring of the fish passage management program to confirm its effectiveness. The Fish Passage Management Plan is discussed within the Environmental Impact Statement Volume 2, Appendix Q1, and with further design information within Technical Memorandum No. T009 and P009 included in Schedule A of the Authorization. This is also a Condition of the Fisheries Act Authorization

With respect to impacts on certain recreational and Aboriginal fisheries, the Project will result in ecosystem level impacts in the Peace River watershed, and there is uncertainty in the predicted response of the aquatic ecosystem in relation to potential serious harm, offsetting outcomes, and the achievement of FMO objectives. To manage for these uncertainties, the Proponent is implementing an adaptive management and monitoring program, with the goal of informing decisions on the appropriateness and effectiveness of mitigation and offsetting measures and opportunities for contingency offsetting measures as appropriate.

Over the 10 year period after project completion, the Project is predicted to result in increased biomass for some fish species (e.g., Bull Trout, Kokanee, Rainbow Trout and Lake Trout) and decreased biomass for other fish species (e.g., Mountain Whitefish, Arctic Grayling and Walleye). Overall, while the fish community composition will change, fish biomass is predicted to increase post-project, resulting in overall increased productivity for recreational and Aboriginal fisheries.

The Project will result in changes in the fish community and fish biomass in the reservoir. This will affect fishing opportunities such as river shore fishing and/or preferred fish species such as Arctic grayling and mountain whitefish which will no longer be available within the reservoir.

.../12

These fishing opportunities and/or preferred species will continue to exist downstream of the reservoir.

To ensure the adaptive management approach is providing for the sustainability and ongoing productivity of recreational and Aboriginal fisheries, the *Fisheries Act* Authorization provide a condition (Authorization condition 7) to enable supplementary measures to be required should there be greater impacts than anticipated.

DFO considered the public interest independently of the comments it received and concerns it was made aware of through the environmental assessment process and consultation on the *Fisheries Act* Authorization.

Having considered the above three topics related to public interest, it is DFO's view that authorizing the Project will provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

INTRADEPARTMENTAL CONSULTATIONS

During the Environmental Assessment process, DFO Science Branch provided advice to FPP and the Joint Review Panel on the Effects of Site C Clean Energy Project on Fish and Fish habitat of the Peace River, BC.

INTERDEPARTMENTAL CONSULTATIONS

Transport Canada needs make a decision on issuance of approvals under the *Navigation Protection Act* for the Site C Main Civil Works and Facility Operations. The Department coordinated with Transport Canada during federal consultation activities with potentially affected Indigenous groups and is working with Transport Canada to coordinate timing, legal advice and media lines on the issuance of our respective authorization/approvals.

DFO and Transport Canada have also been sharing information with the Canadian Environmental Assessment Agency and the Major Projects Management Office and have been receiving support from the relevant departmental Legal Services Units.

RATIONALE FOR RECOMMENDATION

The recommendation set out below is based on the proceeding information, including Attachments, and analysis which can be summarized as follows:

The *Fisheries Act*, s. 6 factors have been considered through DFO's review of the Application and DFO is of the view that Indigenous consultation conducted on the regulatory application has been adequate. As such, DFO is satisfied that the requested authorization can be issued pursuant to paragraph 35(2)(b) of the *Fisheries Act*.

In short, the overall impacts to the sustainability and ongoing productivity of the commercial (not currently relevant), recreational and Aboriginal fisheries from the Project can be managed

.../13

s.21(1)(b)
s.23

through the conditions of the proposed authorization, which includes avoidance, mitigation, and offsetting measures, along with adaptive management processes and supplementary and other measures to manage for uncertainties in future fisheries productivity. The Province of BC has responsibility over the freshwater fisheries affected by the Project and has developed Fisheries Management Objectives aimed at maintaining ecosystem integrity and productivity, while enabling sustainable use. DFO, the Province and BC Hydro are participating in a Site C Fisheries and Aquatic Habitat Mitigation and Monitoring Technical committee with the aim of ensuring that Project effects and associated monitoring, mitigation and offsetting occur in line with FMOs. The public interest was considered as part of the s.6 considerations, and included issues raised by the public related to methylmercury increases, the effectiveness of fish passage and impacts to recreation and Aboriginal fisheries. These public interest issues are addressed either in the federal Decision Statement or in Conditions of the Authorization (e.g., the requirement for a fish passage management plan, requirement for mitigation, offsetting and monitoring, etc.).



DFO is relying on a variety of measures and actions that have been informed by Indigenous consultations including:

- the conditions in the proposed *Fisheries Act* authorization that ensure sustainability and ongoing productivity of the fishery, which are supported by long-term monitoring , adaptive management and supplementary and other measures;
- the measures included in the conditions of the BC Water License permit and in the Site C Federal Decision Statement conditions, which support the sustainability and ongoing productivity of recreational and Aboriginal fisheries;
- existing and ongoing effort by BC Hydro and BC Government related to accommodation and other measures to address potential infringements on Indigenous treaty rights; and
- in recognition of the concerns raised by Indigenous groups, DFO is making a genuine commitment to provide for ongoing Indigenous engagement and dialogue to further minimize residual impacts to fishing rights resulting from the project activities. In this regard, DFO has included Condition 7 in the Authorization that requires BC Hydro to collaborate with Indigenous groups to improve information sharing, participate in monitoring activities, identify opportunities to further address impacts to current use of fisheries resources for traditional purposes, and provide Indigenous groups with capacity funding to support these activities.

RECOMMENDATIONS TO THE REGIONAL DIRECTOR GENERAL

It is recommended that the Regional Director General approve the attached Considerations Under Section 6 of the *Fisheries Act* document (**Attachment 8**) and issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act* for works, undertakings or activities associated with the Site C Main Civil Works and Facility Operations to BC Hydro, and sign the attached Start the Clock letter, S. 35(2) authorization, cover letter and Sign-off form (**Attachments 9, 5, 10, 11**).

Cheryl Webb
Regional Director

☐ I concur with the recommendations

☐ I do not concur with the recommendations

Rebecca Reid
Regional Director General

Regional Director General's Comments:

List of Attachments

1. Joint Review Panel Report- 2014
2. Site C Federal Decision Statement - 2014
3. Serious Harm Determination Record (SHDR) for the Site C main civil works and facility operations.
4. Aboriginal Consultation Record and Issues Tracker
5. *Fisheries Act* Authorization -Site C main civil works and facility operations (15-HPAC01160).
6. Provincial Water Licence Rational document - 2016
7. BC Environmental Assessment Certificate conditions 2014
8. Checklist for Consideration of the Factors set out in Section 6 of the *Fisheries Act*
9. DFO Start the Clock Letter
10. *Fisheries Act* Authorization Cover Letter
11. Request for Approval for *Fisheries Act* Authorization



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CLASSIFICATION
GCCMS #: 2016-XXX-00XXX
EKME #: XXXXXXX

To: Rebecca Reid, Regional Director
Pour: General

Date:

Object: **SITE C CLEAN ENERGY PROJECT**
Objet: **ISSUANCE OF FISHERIES ACT S.35(2)(B) AUTHORIZATION FOR SITE C**
MAIN CIVIL WORKS AND FACILITY OPERATIONS

From / De: Cheryl Webb, Regional Director, EMB

Via:

Additional approvals:
Autre(s) approbation(s):

☒ Your Signature
Votre signature

☐ Information

☐ For Comments
Observation

☐ Material for the RDG
Documents pour le

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur:

Brad Fanos (604-666-3909)

Desantis, Edward

From: Winfield, Nicholas
Sent: Thursday, July 28, 2016 8:38 AM
To: Hilt, Caroline; Chernoff, Eric; Crance, Colin; Gordanier, Tania
Subject: FW: Key Site C docs
Attachments: 2016-07-27_BN for Site C Authorization decision Final.doc; 2016-07-27
_Site_C_MCW_& Facility_Operations_Letter_P_Authorization_Cover_Letter_Final.doc;
2016-07-27_Site_C_MCW_s 35(2)(b) FAA_FINAL.docx; 2016-07-27_Site_C_90-
day_Time_Limit_Resume_Letter_M.doc; 2017-07-27 DFO Letter to Nun wa dee.pdf

Final docs

Nicholas Winfield

A. Director General | Directeur Général p.i.
Ecosystems Management | Gestion des écosystèmes
Ecosystems & Fisheries Management Sector | Secteur des Écosystèmes et gestion des pêches
Fisheries and Oceans Canada | Pêches et Océans Canada
200 Kent Street, Ottawa, Ontario, Canada K1A 0E6
Tel: (613) 998-9088
Government of Canada | Gouvernement du Canada

**Pages 183 to / à 217
are duplicates of
sont des duplicatas des
pages 130 to / à 133**

Desantis, Edward

From: Chernoff, Eric
Sent: Friday, July 29, 2016 12:50 PM
To: Gordanier, Tania
Subject: FW: 2016-009-00849 // Scenario Note for the Minister: Meeting with MP Elizabeth May, Date TBD
Attachments: C:\Users\NeilL\AppData\Local\Temp\1\eeFAD9\Scenario_Note_ Meeting with Elizabeth May on Site C and other issues June 27.doc
Importance: High

As promised...

e

From: Neil, Lisa
Sent: 2016-July-27 2:59 PM
To: Smith, Ken; MacIntyre, Katie; Medeiros, Dean; Chernoff, Eric
Cc: Comeau, Serena
Subject: RE: 2016-009-00849 // Scenario Note for the Minister: Meeting with MP Elizabeth May, Date TBD
Importance: High

Good afternoon folks,

Fortunately, we already drafted a memo and scenario note for this request last month under a different CCM number (2016-009-00753). However, it appears the original meeting date has changed (is now TBD) and we are being asked to get this to ADMO by August 3. Since Monday is a holiday, I would appreciate if you could provide me your input (or review your previously provided input) by end of day on Friday July 29. I am attaching the previously drafted scenario note for your convenience.

1. *Site C project in BC*
2. *Minister of Fisheries, Oceans and the Canadian Coast Guard's intended appeal of the decision in the case brought by Alexandra Morton to the Minister of Fisheries and Oceans and Marine Harvest, Inc.*
3. *DFO lease to the Salt Spring Island Harbour authority -*

Please don't hesitate to contact me if you have any questions.

Thank you!

Lisa Neil

Analyst/analyste
Fisheries Protection Program | Programme de protection des pêches
Ecosystems Management Sector | Secteur direction générale des écosystèmes
Fisheries and Oceans Canada | Pêches et Océans Canada

Address | Adresse - 200 rue Kent Street, Ottawa, Ontario, K1A0E6
Mail Station | Station de poste – 8W176
Telephone | Téléphone - 613.949.3128
Email | Courriel - lisa.neil@dfo-mpo.gc.ca

From: Amelin, Vasili

Sent: Tuesday, July 26, 2016 1:29 PM

To: Comeau, Serena <Serena.Comeau@dfo-mpo.gc.ca>; Galka, Stephanie <Stephanie.Galka@dfo-mpo.gc.ca>

Cc: MacIntyre, Katie <Katie.MacIntyre@dfo-mpo.gc.ca>; Brisson, Karine <Karine.Brisson@dfo-mpo.gc.ca>; Charette, Louise <Louise.Charette@dfo-mpo.gc.ca>; Paquette, Michael <Michael.Paquette@dfo-mpo.gc.ca>; Winfield, Nicholas <Nicholas.Winfield@dfo-mpo.gc.ca>; Richter, Julie <Julie.Richter@dfo-mpo.gc.ca>

Subject: FW: 2016-009-00849 // Scenario Note for the Minister: Meeting with MP Elizabeth May, Date TBD

EM,

You have been chosen as the lead for this file with input from Aquaculture and SCH.

Please prepare a memo and scenario note as requested below.

The BF in ADMO is Aug 3.

Thanks,

Lead: EM

Input: SCH, AM

GCCMS #: 2016-009-00849

BF in DMO: August 3

From: Clement, Rachel

Sent: July-26-16 11:47 AM

To: Iacovitti, Michelle; Lewis, Valerie; Amelin, Vasili

Cc: Richter, Julie; Waddell, Mark; Banville, Pierrette; Bilmer, Angela; Martin, Leonard; Butcher, Ashley; Hopkins, Lillian; Martel, Robyne; Baldwin, Jennifer; Genier, Sylvie; Huneault, Robert; Clement, Rachel; D'Angelo, Louise-Anne

Subject: 2016-009-00849 // Scenario Note for the Minister: Meeting with MP Elizabeth May, Date TBD

Good morning,

Please process the following docket for the Minister:

Lead: EFM

GCCMS #: 2016-009-00849

BF in DMO: August 5

The Minister will be meeting with MP Elizabeth May to discuss the following, time and date TBC:

1. *Site C project in BC*
2. *Minister of Fisheries, Oceans and the Canadian Coast Guard's intended appeal of the decision in the case brought by Alexandra Morton to the Minister of Fisheries and Oceans and Marine Harvest, Inc.*
3. *DFO lease to the Salt Spring Island Harbour authority*

Please prepare a Scenario Note for the Minister's use.

Thank you!

Rachel Clément

Correspondence Officer | Agente de correspondance
Deputy Minister's Office | Cabinet de la sous-ministre
Fisheries and Oceans Canada | Pêches et Océans Canada
Telephone | Téléphone (613) 991-0384

From: Waddell, Mark

Sent: July-26-16 9:43 AM

To: Banville, Pierrette; Bilmer, Angela; Clement, Rachel

Cc: Richter, Julie; Martin, Leonard; Butcher, Ashley; Hopkins, Lillian; Martel, Robyne; Patrick, Lindsey; Baldwin, Jennifer; Genier, Sylvie; Huneault, Robert; Iacovitti, Michelle; Lewis, Valerie

Subject: FORMAL: SN - Mtg. w. Elizabeth May

Good Morning,

The Minister will be meeting with MP Elizabeth May to discuss the following, time and date TBC:

1. Site C project in BC
2. Minister of Fisheries, Oceans and the Canadian Coast Guard's intended appeal of the decision in the case brought by Alexandra Morton to the Minister of Fisheries and Oceans and Marine Harvest, Inc.
3. DFO lease to the Salt Spring Island Harbour authority

Please prepare a Scenario Note for the Minister's use.

Mark Waddell

Departmental Assistant | Adjoint ministériel
Minister's Office | Bureau du Ministre
Fisheries & Oceans Canada | Pêches et Océans Canada
Tel: 613-947-4561 | Mark.Waddell@dfo-mpo.gc.ca



CONFIDENTIAL

2015-505-00097

EKME 3566301

MEMORANDUM FOR THE MINISTER

**CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

The purpose of this memorandum is to provide you an update on the Site C Clean Energy Project, a third hydroelectric dam on the Peace River in northeast British Columbia.

A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act 2012*. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights, and to fish and fish habitat, which cannot be mitigated.

The Governor in Council (GiC) subsequently determined that environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a decision statement with conditions that BC Hydro must legally meet.

In August 2015, the Federal Court dismissed two applications made by indigenous groups for judicial review of the decision of the GiC. In September 2015 two of the applicants, appealed that decision to the Federal Court of Appeal.

Regulatory approvals for the project are required from DFO. The first approval was issued on September 30, 2015 under paragraph 35(2)(b) of the *Fisheries Act* for serious harm to fish resulting from preliminary construction activities associated with site preparation works. Since the causeway was being constructed in a different location than that authorized, DFO issued a Warning Letter to BC Hydro on December 16, 2015. DFO continues to monitor the site preparation works for compliance.

In December 2015, BC Hydro submitted a second application to DFO for the next phase of the project which is construction of the main civil works (e.g., construction of the dam and reservoir filling), and proposes to start construction on April 1, 2016.

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

.../2

CONFIDENTIAL

BACKGROUND

BC Hydro is constructing the Site C Clean Energy Project, a hydroelectric dam on the Peace River in northeast British Columbia, near Fort St. John. This will be the third major dam on the Peace River and will result in the creation of an 83 km reservoir.

A Canada-British Columbia joint review panel (the Panel) conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act* 2012 for the proposed Site C Clean Energy Project. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights and to fish and fish habitat which cannot be mitigated. The Governor in Council (GiC) subsequently determined through an Order in Council that environmental effects of the Site C project are justified in the circumstances and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which BC Hydro must legally comply.

Fisheries Act Authorization Issues:

On September 30, 2015, the Department issued an authorization under paragraph 35(2)(b) of the *Fisheries Act* for site preparatory construction activities related to the Project. On December 15, 2015, the Department received an Application for Authorization for the main civil works for the Project (i.e., construction of the dam, generating station and spillways, and reservoir filling).

On October 20, 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. Under its own initiative, BC Hydro ceased further work on the causeway. Consistent with the interim Fisheries Protection Compliance Protocol between the Fisheries Protection Program and Conservation and Protection Program, the Department conducted a site visit and assessment of the site.

On December 16, 2015, the Department issued a Warning Letter to BC Hydro advising them that the causeway construction works in the Peace River resulted in an offence under the *Fisheries Act* because they did not comply with the conditions of the authorization issued to them for the site preparation works. BC Hydro has responded to this issue and the Department is continuing to monitor this Project to ensure compliance with the authorization. To date, no further compliance issues have been identified.

Indigenous Issues:

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to you, the Prime Minister, and other cabinet ministers requesting a review of the federal decision to approve the Project. They also asked the Government to work with First Nations to establish a comprehensive framework for engagement on major development projects.

At the recent Assembly of First Nation's Chiefs (December 8-11, 2015), a resolution was

.../3

CONFIDENTIAL

passed which called for all federal regulatory permits to be put on hold and for a review of the Governor in Council decision on this Project.

STRATEGIC CONSIDERATIONS: PROGRAM POLICY DEVELOPMENT

On November 5-6, 2014, four Indigenous groups (Doig River, Prophet River, and West Moberly First Nations and McLeod Lake Indian Band) and a landowner association (Peace Valley Landowner Association) filed two applications for judicial review in the Federal Court, seeking judicial review of the GiC's October 14, 2014 Order in Council, concluding that the significant adverse environmental effects that the Project are likely to cause are justified in the circumstances.

In August 2015, the Federal Court dismissed the two applications for judicial review of the decision of the GiC. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nation, appealed that decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

Protests of the project have been ongoing with demonstrators occupying an area near the project site since late December 2015. Beginning on February 22, 2016, BC Hydro was before the Supreme Court of British Columbia to seek an injunction against the protests such that work could continue unimpeded.

There has been and continues to be significant recent local media attention related to this Project.

INTRADEPARTMENTAL CONSULTATIONS

No other sectors were consulted in the development of this memorandum.

INTERDEPARTMENTAL CONSULTATIONS

The Department has been coordinating with other federal departments (Transport Canada, Canadian Environmental Assessment Agency and Major Projects Management Office) on litigation issues, and regulatory permitting consultations and issuance.

ADVICE AND RECOMMENDATIONS TO MINISTER

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the Project, and will provide regular briefings on key activities associated with the review as they occur.

Matthew King
Deputy Minister

Leslie MacLean
Associate Deputy Minister



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CONFIDENTIAL
MECTS # 2015-505-00097
EKME # 3562135

To: Matthew King
Pour:

Date:

SUBJECT: **CURRENT STATUS FOR SITE C**
CLEAN ENERGY HYDROELECTRIC PROJECT, BC

Objet:

From / De: Rebecca Reid, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister, EFM

Philippe Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

Christine Loth-Bown, Director General, EM

<input checked="checked" type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: Brad Fanos, Regulatory Reviews Manager, Fisheries Protection
Program (604) 666-3909 / C. Webb, Regional Director, Ecosystems Management Branch / st



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Regional Director,
Ecosystems Management Branch
Pacific Region

Directrice régionale
Direction des écosystèmes
Région du Pacifique

2016-505-00037
EKME#: 3648892v1

MEMORANDUM FOR THE REGIONAL DIRECTOR GENERAL

**SITE C CLEAN ENERGY PROJECT
DECISION TO ISSUE *FISHERIES ACT*, PARAGRAPH 35(2)(b) AUTHORIZATION
FOR
SITE C MAIN CIVIL WORKS AND FACILITY OPERATIONS
(FOR DECISION)**

s.21(1)(b)

SUMMARY

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project), the third hydroelectric dam in a series of dams on the Peace River in northeast BC.

In October 2014, the federal Minister of Environment issued a Decision Statement for the federal environmental assessment with legally binding conditions enabling the Project to proceed to the regulatory permitting stage. In September 2015, the Proponent initiated site preparation construction activities for the Project after receiving a *Fisheries Act* authorization for specific site preparation works, activities and undertakings.

On December 15, 2015, the Proponent submitted to Fisheries and Oceans Canada (DFO) a second Application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for facility operations.

DFO initiated a regulatory review of the second Application pursuant to the *Application for Authorization under Paragraph 35(2)(b) of Fisheries Act Regulations* and consistent with existing Fisheries Protection Program policies and operational procedures, including conduct of Indigenous consultations and the consideration of the factors set out in *Fisheries Act* Section 6.

Over a 7 month period, DFO conducted consultations with potentially affected Indigenous groups, making meaningful efforts to provide opportunities for input on the current application and responding to all Indigenous groups that have provided comments. In consideration of the efforts made to engage Indigenous groups, the Department's responses to the issues raised by the groups, [REDACTED] the Department is concluding consultation for the purpose of making a regulatory decision.

The Department has coordinated with Transport Canada during federal Indigenous consultation activities and is working with Transport Canada to coordinate timing, legal advice and media lines on the issuance of our respective authorization/approvals. DFO has also considered consultation and accommodation efforts made by the province during the water licence application review, and information provided by BC Hydro in relation to their consultation and accommodation efforts.

A decision whether to issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act* is required. Given the closure of consultation, and the conclusion of DFO's review of the application, it is recommended that the Regional Director General issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act*.

DECISION RATIONALE

The Project:

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project) - the third hydroelectric dam in a series of dams on the Peace River in northeast BC. The Project is estimated to have a capital cost of \$8.3 billion and create approximately 8,000 person-years of employment. The Proponent also contends that the Project will provide clean, reliable and affordable electricity for 450,000 homes per year for more than 100 years. As proposed, the Project will be an earth fill dam, approximately 1,050 metres in length, and 60 metres high above Peace River. Reservoir creation will result in approximately 83 kilometres of the Peace River being flooded to two to three times the current width.

Environmental Assessment:

A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*.

DFO provided advice in the environmental assessment (EA) on project impacts to fish and fish habitat of the Peace River. DFO Science Branch was engaged to provide advice which resulted in two Canadian Science Advisory Secretariat (CSAS) Science Responses, one that reviewed the downstream boundary for project fish and fish habitat effects and the other providing a technical review of project effect to fish and fish habitat in the Peace River.

The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for First Nations represented by the Treaty 8 Tribal Association and that these effects cannot be mitigated (**Attachment 1**). The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances.

In October 2014, the federal Minister of Environment issued a Decision Statement with legally binding conditions (**Attachment 2**). The Canadian Environmental Assessment Agency is responsible for monitoring the compliance of BC Hydro with the Decision Statement conditions.

.../3

In November 2014, West Moberly First Nations, Prophet River First Nation and Doig River First Nation filed an application for judicial review in Federal Court challenging the Minister of the Environment's Decision Statement and the GiC's justification decision (the Doig River First Nation eventually withdrew). In August 2015, the Federal Court dismissed the application for judicial review on the basis that the Crown had met its duty to consult and accommodate and that, having met this duty, there was no requirement on the part of the Governor in Council to determine if the Project unjustifiably infringes their section 35 treaty rights. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal and a one-day hearing has been set for September 14, 2016 in Montreal. The focus of the appeal is to determine if the Applications Judge was correct in concluding that the Governor in Council was not required to determine the infringement of the Appellants' treaty rights in making its decision pursuant to s. 52(4) of *CEAA 2012*.

Regulatory Review Process:

On September 30, 2015, Fisheries and Oceans Canada (DFO) issued a *Fisheries Act* authorization to BC Hydro for the site preparation works for the Project.

On December 15, 2015, BC Hydro submitted a second Application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for facility operations. The *Application for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*, defines the application process, information requirements and timelines for making decisions.

On January 25, 2016, the Application was deemed complete. However, the 90-day regulated time limit within which a decision must be made on the application ceased to apply under paragraph (8)(1)(d) *Application for Authorization under Paragraph 35 (2) (b) of the Fisheries Act Regulations*, as Indigenous consultations are required before a decision is made. Concurrent with the Indigenous consultation activities, the Department continued its review of the application following existing Fisheries Protection Program policies and operational procedures.

The Site C Application for Authorization for construction of the main civil works and for facility operations was reviewed thoroughly by DFO staff and it was confirmed that the Project has works, undertakings or activities that will result in serious harm to fish (**Attachment 3**) requiring a decision for authorization under the *Fisheries Act*. The serious harm to fish likely to result from the proposed works, undertakings, or activities include:

1. Effects on fish habitat:

- Instream construction footprints of physical structures (dam foot print and coffer dams during construction), and estimated at a total of 86.35 ha.
- Interim changes to fish habitat from River Diversion will result in the creation of a headpond and alter riverine fish habitat along approximately 18 km of the Peace River upstream of the dam site, including the confluences of Peace River tributaries within this reach. This will be followed by filling and creation of the Site C Reservoir, which will result in inundation of approximately 2,800 ha of mainstem lotic habitat and 163 ha of tributary lotic habitat. The net residual serious harm to fish associated with filling of the Reservoir is difficult to quantify however, changes to fish habitat are

.../4

anticipated to result in the loss of Arctic Grayling and a significantly depressed population of Peace River Mountain Whitefish.

- Construction of the Site C dam will shift the existing point of flow regulation (i.e., at the outlet of the Peace Canyon dam) by a distance of approximately 85 km downstream, and therefore increase the daily range of flows downstream of the Site C dam. During Facility Operation, daily flow regulation (predicted to range between 1.0-1.5 m) will result in repeated dewatering of some fish habitat along the river margins downstream of the Site C dam. This effect of flow regulation on fish habitat is anticipated to diminish downstream of the Pine River confluence, due to significant flow contributions from the Pine River and the Beatton River further downstream.

2. Effects to fish health and survival:

- Creation of the diversion headpond during River Diversion, and the subsequent filling and creation of the Site C Reservoir, is anticipated to result in the loss of distinct groups of fish that inhabit the existing riverine environment (e.g., Arctic Grayling and River Mountain Whitefish).
- Stranding of fish and fish eggs is anticipated in the Peace River during River Diversion, as the diversion headpond is to be repeatedly dewatered.
- Fish entrained through the diversion tunnels during River Diversion and through the modified diversion tunnel during Reservoir Filling is likely to result in death of fish.
- Fish entrained through the generating station during Reservoir Filling and Operations are anticipated to have size-dependent survival rate estimated at approximately 60% for large fish.
- Fish entrained through the spillways during Reservoir Filling and Facility Operations are anticipated to have a high rate of survival (likely >95%).
- Fish will be entrained through the generating station and spillways during Facility Operation. Annual entrainment rates were modelled by BC Hydro in its Fish Passage Management Plan to be <10% for the population for all fish species except for bull trout, kokanee, lake whitefish and lake trout. However, due to the fundamental changes in the aquatic ecosystem as a result of the creation of the reservoir fish movement patterns and entrainment risk may be greater.
- Potential stranding of fish downstream of the dam site during Facility Operation due to flow regulation. Effects on fish from stranding are anticipated to occur largely in the reach between the dam site downstream to the Pine River, as the effects of flow regulation are anticipated to attenuate with inflows from the Pine River and the Beatton River further downstream.
- Potential stranding of fish in the reservoir during Facility Operation.
- Incidental mortality of fish during upstream fish passage by means of the temporary and permanent trap and haul facilities and associated sorting, sampling, transport and release. The acceptable level of incidental mortality is to be no more than 5% of the total number of fish captured by the trap and haul facilities and associated sorting, sampling, transport, and release on an annual basis.

3. Effects on fish movement:

- During River Diversion, Reservoir Filling, and Facility Operation upstream fish movement at the dam site will be blocked, and in combination with the anticipated

.../5

habitat changes in the reservoir, will contribute to the decline of Arctic Grayling and Mountain Whitefish.

Fisheries Act Authorization

Under Paragraph 35(2)(b) of the *Fisheries Act* the Minister has the authority to authorize works undertaking or activities that cause serious harm to fish. The Authorization has been developed following a consistent national template and includes a series of enforceable conditions that the Proponent is required to follow. The conditions of authorization are set out with the objective of providing for the sustainability and ongoing productivity of the fisheries, and are focused on mitigation measures to avoid and reduce avoid serious harm, offsetting measures to counter balance serious harm to fish and monitoring conditions to ensure appropriate information is collected and provided to DFO to track compliance and effectiveness of the various mitigations and offsets, and potential accommodation of impacted Indigenous groups.

Mitigation measures that are practically feasible to mitigate serious harm to fish are included as conditions of the proposed Site C authorization. Monitoring by the Proponent to ensure mitigation measures are being implemented and are mitigating serious harm to fish is also a condition of the authorization.

As there will be serious harm to fish after the application of avoidance and mitigation measures, the Proponent has developed a plan to undertake offsetting measures, the compliance of which will be secured through conditions to the authorization. The offsetting plan aims to enhance fish habitat and contribute to the Fisheries Management Objectives (FMO), particularly for those fish species identified as high value target species for anglers in the provincial FMOs. Offsetting measures to be undertaken will include:

- Peace River Channel Contouring and Side Channel Enhancement, which will:
 - increase the amount of available, permanently wetted habitat for fish.
 - provide rearing, feeding, overwintering, and potential spawning habitats for fish.
 - reduce channel dewatering and potential fish stranding risk in the area; and
 - support a variety of life stage uses for local fish populations by increasing the complexity and variability of fish habitat.
- Site C Reservoir Enhancement, which will:
 - increase the area of shallow water habitat, providing a diversity of habitats including backwater habitat.
 - support development of aquatic vegetation and riparian habitat, at select sites along the reservoir shoreline.

Complementary measures are investments in data collection and scientific research related to maintaining or enhancing the productivity of commercial, recreational or Aboriginal fisheries. In areas where there are limited opportunities for measures to offset fisheries productivity losses and where there is limited understanding or data on fisheries populations, complementary measures may be considered in addition to other offsetting measures. These measures are included as a condition of the authorization for Site C for Arctic grayling. The Project is anticipated to result in the loss of the Arctic Grayling population upstream of the proposed dam, so opportunities to offset these fisheries productivity losses upstream of the dam site do not exist. Complementary measures including Arctic grayling data collection/scientific research studies will be undertaken by the Proponent as a condition of the authorization in a variety of areas with the goal of

.../6

enhancing the productivity of Arctic grayling downstream of the dam. Information will also be collected to identify and assess the likely effectiveness of habitat enhancement activities for Arctic grayling. After the results of the scientific and technical studies are completed, options for implementation of fish habitat enhancements will be considered.

Indigenous Consultation:

When making a regulatory decision to authorize works, undertakings or activities under Paragraph 35(2)(b) of the *Fisheries Act*) DFO is required to conduct Indigenous consultations with groups that are potentially affected by the proposed project (for detailed description of Indigenous groups refer to Appendix 1, Attachment 6). DFO has undertaken Indigenous Consultation on the Application with the following potentially affected Indigenous Groups identified as being owed a high duty for consultation:

- Dene Tha' First Nation (letter of support for Project received)
- Duncan's First Nation (letter of support for Project received)
- McLeod Lake Indian Band (letter of support for Project received)
- Horse Lake First Nation (no engagement with DFO)
- Kelly Lake Métis Settlement Society (no engagement with DFO)
- Métis Nation of British Columbia (no engagement with DFO)
- Blueberry River First Nations (engagement with DFO)
- Doig River First Nation (engaged with DFO)
- Halfway River First Nation (engaged with DFO)
- Prophet River First Nation (engagement with DFO via Nun wa dee Stewardship Society)
- West Moberly First Nations (engaged with DFO via Nun wa dee Stewardship Society)
- Saulteau First Nations (engagement with DFO)

The high depth of consultation owed to these potentially affected Indigenous groups was determined by the Canadian Environmental Assessment Agency during the EA phase, and this depth assessment was carried forward by DFO and applied to regulatory applications for the Site C Project received by the Department since conclusion of the EA.

Following receipt of the Application on December 22, 2015, DFO sent a letter along with BC Hydro's Application enclosed to the potentially affected Indigenous Groups identified above. DFO requested their views on the proposed works, undertakings or activities described in the Application, and any comments they may have regarding potential impacts to fish and fish habitat, and on asserted or established Indigenous or Treaty rights. The letter also offered the opportunity to meet to discuss the BC Hydro application and offsetting plan, and support DFO's review prior to a regulatory decision on the Application. In some cases, Indigenous groups were very responsive and accepted DFO's request to meet and discuss the regulatory application, while in other cases, Indigenous groups either responded in writing to express their views or did not respond. DFO followed up with additional letters when no response was received, and was very responsive to requests to meet and/or provide information and clarification on issues raised.

Between December 2015 and July 2016, the Department made concerted efforts to consult with the potentially affected Indigenous groups, to provide meaningful opportunities for input on the

.../7

current application, carry out a dialogue on issues of concern to Indigenous groups, and to provide timely responses to all Indigenous groups that provided comments (**Attachment 4**).

s.21(1)(b)

s.23

West Moberly First Nations and Prophet River First Nation are Treaty 8 First Nations represented collectively by the Nun wa dee Stewardship Society (the Nun wa dee), an entity which reviews regulatory applications on behalf of these groups. Salteau First Nations, which is also a Treaty 8 signatory, requested that consultation on the Application with their community also be channelled through the Nun wa dee. Engagement with these three groups via the Nun wa dee did not initiate until March 22, 2016, despite multiple efforts by DFO. Consultation engagement with the Nun wa dee on BC Hydro's Application has been complex largely due to outstanding litigation in the Federal Court of Appeal in relation to the Federal Environmental Decision Statement allowing the Project to proceed. This litigation was brought forward by West Moberly First Nations and Prophet River First Nation, and the court case is anticipated to be heard in September 2016.

West Moberly First Nations and Prophet River First Nation have requested that DFO and Transport Canada (TC) cease processing of all regulatory applications and associated consultation, pending the court's decision. Through written correspondence with these two groups, the former Minister indicated that DFO will not put a decision on issuance of the *Fisheries Act* authorization on hold, and on July 18, 2016, Minister Leblanc met with West Moberly First Nations Chief Roland Willson and Prophet River First Nation Chief Lynette Tsakoza to discuss their concerns regarding the Site C Project.

Blueberry River First Nation has engaged with DFO in discussing BC Hydro's Application, and expressed concerns broader than the regulatory application at hand (i.e. cumulative effects, reconciliation, etc.). DFO was able to engage in deep consultation with Doig River First Nation and McLeod Lake Indian Band, who provided a detailed technical review of BC Hydro's Application and commented on DFO's Draft Conditions of Authorization. Halfway River First Nation met with DFO in March 2016 to discuss the Application, and expressed concerns related to BC Hydro's trap and haul program and changes to the fish community as a result of the creation of the Site C reservoir. DFO responded to these concerns in writing providing baseline information on the Peace River fish community and detailed information on BC Hydro's trap and haul program as requested by Halfway River First Nation. Dene Tha' First Nation had a lower level of engagement with DFO expressing concerns via written correspondence related to methylmercury, which DFO addressed in written responses to this Indigenous Group.

The Duncan's First Nation, Dene Tha' First Nation and McLeod Lake Indian Band have all expressly provided DFO with a letter of support for the Project, while Horse Lake First Nation, Kelly Lake Métis Settlement Society, and the Métis Nation British Columbia have not engaged with DFO after multiple rounds of follow-up correspondence.

Details of BC Hydro's engagement with these high depth of consultation Indigenous groups and accommodations measures are set out in The BC Rationale regarding Main Water Licence (**Attachment 6**)

.../8



s.21(1)(b) DFO recognizes the large scale ecosystem transformation in the Peace River that will occur as a
s.23 result of the construction and operation of the Site C dam as well as the uncertainty in outcomes
related to the final assemblage of fish species, overall biomass and populations in the reservoir,
its tributaries and in the Peace River downstream, post dam construction. In addition, the
Department acknowledges the important concerns raised by Indigenous groups and specifically
the residual impacts to the fishing opportunities and practices resulting from the construction and
operation of the Project.

The extent, duration, and magnitude of effects on the aquatic ecosystem as the result of the
proposed works, undertakings or activities are significant, and the response of the aquatic
ecosystem and associated biota to the transformation of a portion of the Peace River into a
reservoir is uncertain. As such, supplementary and other measures may be required should
monitoring results indicate that the residual impacts to fish and fish habitat are greater than
anticipated in the Application for Authorization and/or to provide for the sustainability and
ongoing productivity of commercial, recreational and Aboriginal fisheries.

In an effort to minimize impacts to asserted or established Indigenous or Treaty rights (e.g.,
fishing opportunities and practices), and to fish and fish habitat, DFO is relying on a variety of
measures and actions, that have been informed by Indigenous consultation including:

- 1) **Fisheries Act Authorization** conditions which require avoidance, mitigation, monitoring,
offsetting, and supplementary measures to ensure the sustainability and ongoing
productivity of the fishery, and long-term monitoring and adaptive management measures
to address uncertainty in the future state of the fish community (**Attachment 5**);
- 2) **Condition 7** has been included in the *Fisheries Act* Authorization to enable
supplementary and other measures to be required should there be greater impacts than
anticipated and/or to address the sustainability and ongoing productivity of commercial,
recreational and Aboriginal fisheries. Condition 7.2 specifically identifies mandatory
measures aimed at supporting meaningful engagement and information sharing with
Indigenous groups in relation to Project activities.
- 3) **The BC Water Licence permit conditions** requiring mitigation measures, long term
monitoring and adaptive management, and offsetting measures in addition to a
compensation fund and supplementary measures, to ensure the sustainability and ongoing
productivity of the fishery, (**Attachment 6**);
- 4) **The BC Environmental Assessment Certificate conditions** (**Attachment 7**)
- 5) **The federal CEAA decision statement conditions** (**Attachment 2**)
- 6) **Existing and ongoing offers by BC Hydro and the BC Government** related to
accommodation and other measures to address potential infringements on Indigenous
Treaty rights, as outlined in the BC Rationale regarding the Main Water Licence
(**Attachment 6**); and
- 7) **DFO intent for ongoing dialogue with Indigenous groups** related to adaptive
management decisions related to this project. In light of the limited engagement in
relation to potential accommodation measures, an explicit opportunity to continue DFO's

.../9

engagement with potentially affected Indigenous groups to develop a respectful and collaborative process, and to dialogue on future monitoring and adaptive management measures to ensure the sustainability and ongoing productivity for CRA fisheries (including addressing residual impacts to fishing rights and practices).

Fisheries Act Section 6 Considerations:

Prior to making a decision on Authorization under Paragraph 35(2)(b) of the *Fisheries Act* the Minister must consider the 4 factors set out in section 6 of the *Fisheries Act*. The Checklist for Consideration of the Factors set out in Section 6 of the Fisheries Act has been completed (**Attachment 8**) and is summarized below:

- s.19(1)
1. **The contribution of the fish to the ongoing productivity of CRA fisheries.** In the review of the Project, DFO has assessed project impacts to those fish species that are part of the recreational and Aboriginal fishery (at present there is no commercial fishery in the project area);
 2. **Fisheries management objectives.** In the review of the Project, DFO has considered the provincial fish objectives for the project area. The Department's goal is "... to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries" as set out in the *Fisheries Protection Policy Statement* (2013). The province of BC through delegated authority under the *Fisheries Act* has responsibility for the province's freshwater species. In this capacity, the BC Ministry of Environment is responsible for managing the fisheries of the Peace River watershed. The BC Ministry of Environment has developed the following FMO document which applies in the project area: *Ministry of Environment Fish and Wildlife Interim Objectives for the Site C Project Area Draft 2009* updated as per the December 7, 2015 Memo from [REDACTED] Ecofish Research Ltd. to Mr. Ted Down of the Ministry of Environment of British Columbia with the subject "RE: Site C fish objectives conclusion from MOE/FLNRO workshop 25 Nov 2015 – Draft". In summary the overall objectives for fish in the lower Peace Region are: a) Maintaining Ecosystem Integrity and Productivity; and b) Sustainable Use.

The Project will result in an aquatic ecosystem transformation from a riverine to reservoir environment. This will change the system from a shallow fast flowing river to a large deep slow flowing lake-like waterbody. This large scale biophysical change will result in cascading changes throughout the aquatic community, affecting productivity of invertebrates, forage fish species, and larger piscivorous species of value to recreational and Aboriginal fisheries (note: there is no commercial fishery). Over the 10 year period after Project completion, the Project is predicted to result in increased biomass for fish species such as Bull Trout, Kokanee, Rainbow Trout, and Lake Trout and decreased biomass for other fish species such as Mountain Whitefish, Arctic Grayling and Walleye. Arctic grayling and mountain whitefish are predicted to be eliminated from the reservoir due to their life history requirements that are not compatible with the reservoir environment. Downstream of the dam site, these species will continue to exist; specifically, mountain whitefish biomass is predicted to increase, while Arctic grayling and Walleye biomass is anticipated to be reduced. Overall, while the fish community composition will change, fish biomass is predicted to increase post-project. Significant

.../10

increases in kokanee biomass are expected to be the major contributor to the overall increase in fish biomass in the reservoir, and this species will serve as an important forage fish for other larger CRA fish species like Bull trout, Rainbow trout, burbot and Lake trout, which are expected to increase in the reservoir environment.

The overall increases in fish biomass resulting from the reservoir transformation will be consistent with the fisheries management objectives as stated above. Importantly, the aquatic ecosystem transformation associated with the change from a riverine to reservoir environment is likely to have a far greater bearing on the achievement of the fisheries management objectives than the proposed avoidance, mitigation and offsetting measures. Therefore, the monitoring programs and adaptive management proposed by BC Hydro are crucial in identifying and informing whether the future fish community in the reservoir and downstream of the dam occurs in line with FMOs. Given this uncertainty, contingency offsetting, adaptive management processes, and supplementary measures are included as Conditions of the Authorization with the aim of ensuring the long-term sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

DFO, BC Hydro and the Province of BC are participating in a Site C Fisheries and Aquatic Habitat Mitigation and Monitoring Technical Committee with the aim of ensuring that project effects and associated monitoring, mitigation, and offsetting occur in line with fisheries management objectives. Under the terms of reference, Indigenous groups may be invited to be a part of the Technical Committee to support the ongoing implementation of mitigation and monitoring plans.

While the Project will result in an aquatic ecosystem transformation from a riverine to reservoir environment and associated changes in the fish community and fish biomass in the reservoir, as noted above, that may affect fishing opportunities for First Nations, these opportunities will continue to exist during construction and after completion of the Project. Although some fishing opportunities such as river shore fishing and/or preferred fish species such as Arctic grayling and mountain whitefish will no longer be available within the reservoir, these fishing opportunities for preferred species will continue to exist downstream of the reservoir, and new fishing opportunities for First Nations will be created in the reservoir for preferred species such as bull trout and less-preferred species such as kokanee and lake trout.

3. **Whether there are measures and standards to avoid, mitigate or offset serious harm to fish that are part of a CRA fishery, or that support such a fishery.** Measures to avoid serious harm to fish were incorporated into the project design and location of project elements. Measures to mitigate and offset serious harm to fish will be implemented and are required as conditions of the Fisheries Act, paragraph 35(2)(b) authorization. A detailed outline of the mitigation, monitoring and offsetting measures have been presented earlier in this rationale.
4. **The public interest.** The public were provided the opportunity to comment as part of the environmental assessment of the Project. No public consultation was conducted during the regulatory phase as there is no requirement to do so. However, the public has taken the opportunity to express their views and/or concerns in letters to the Minister and other

.../11

senior departmental officials. To date, it appears that concerns expressed by the public are not new and have been considered when the conditions in the federal Decision Statement as well as the conditions in the BC Environmental Assessment Certificate for the Site C Project were developed.

DFO is aware of three topics that have been expressed for the Project relating to the public interest: 1) increases in methylmercury in fish, 2) the effectiveness of the fish passage management plan, and 3) impacts to certain recreational and Aboriginal fisheries.

With regard to concerns raised regarding methylmercury, fish consumption and human health effects, these concerns are addressed by Condition 13 of the federal Decision Statement which contains measures the Proponent must follow to address this issue.

With regard to the fish passage, the Proponent will be undertaking effectiveness monitoring of the fish passage management program to confirm its effectiveness. The Fish Passage Management Plan is discussed within the Environmental Impact Statement Volume 2, Appendix Q1, and with further design information within Technical Memorandum No. T009 and P009 included in Schedule A of the Authorization. This is also a Condition of the Fisheries Act Authorization

With respect to impacts on certain recreational and Aboriginal fisheries, the Project will result in ecosystem level impacts in the Peace River watershed, and there is uncertainty in the predicted response of the aquatic ecosystem in relation to potential serious harm, offsetting outcomes, and the achievement of FMO objectives. To manage for these uncertainties, the Proponent is implementing an adaptive management and monitoring program, with the goal of informing decisions on the appropriateness and effectiveness of mitigation and offsetting measures and opportunities for contingency offsetting measures as appropriate.

Over the 10 year period after project completion, the Project is predicted to result in increased biomass for some fish species (e.g., Bull Trout, Kokanee, Rainbow Trout and Lake Trout) and decreased biomass for other fish species (e.g., Mountain Whitefish, Arctic Grayling and Walleye). Overall, while the fish community composition will change, fish biomass is predicted to increase post-project, resulting in overall increased productivity for recreational and Aboriginal fisheries.

The Project will result in changes in the fish community and fish biomass in the reservoir. This will affect fishing opportunities such as river shore fishing and/or preferred fish species such as Arctic grayling and mountain whitefish which will no longer be available within the reservoir. These fishing opportunities and/or preferred species will continue to exist downstream of the reservoir.

To ensure the adaptive management approach is providing for the sustainability and ongoing productivity of recreational and Aboriginal fisheries, the *Fisheries Act* Authorization provide a condition (Authorization condition 7) to enable supplementary measures to be required should there be greater impacts than anticipated.

DFO considered the public interest independently of the comments it received and concerns it was made aware of through the environmental assessment process and consultation on the *Fisheries Act* Authorization.

Having considered the above three topics related to public interest, it is DFO's view that authorizing the Project will provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

INTRADEPARTMENTAL CONSULTATIONS

During the Environmental Assessment process, DFO Science Branch provided advice to FPP and the Joint Review Panel on the Effects of Site C Clean Energy Project on Fish and Fish habitat of the Peace River, BC.

INTERDEPARTMENTAL CONSULTATIONS

Transport Canada needs make a decision on issuance of approvals under the *Navigation Protection Act* for the Site C Main Civil Works and Facility Operations. The Department coordinated with Transport Canada during federal consultation activities with potentially affected Indigenous groups and is working with Transport Canada to coordinate timing, legal advice and media lines on the issuance of our respective authorization/approvals.

DFO and Transport Canada have also been sharing information with the Canadian Environmental Assessment Agency and the Major Projects Management Office and have been receiving support from the relevant departmental Legal Services Units.

RATIONALE FOR RECOMMENDATION

The recommendation set out below is based on the proceeding information, including Attachments, and analysis which can be summarized as follows:

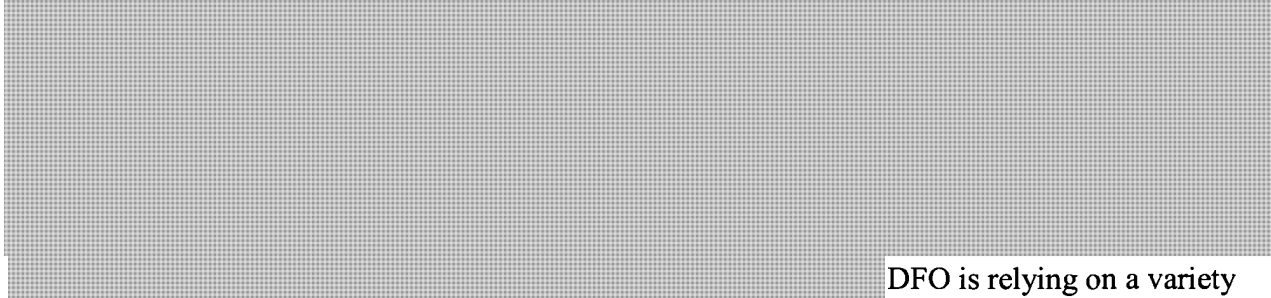
The *Fisheries Act*, s. 6 factors have been considered through DFO's review of the Application and DFO is of the view that Indigenous consultation conducted on the regulatory application has been adequate. As such, DFO is satisfied that the requested authorization can be issued pursuant to paragraph 35(2)(b) of the *Fisheries Act*.

In short, the overall impacts to the sustainability and ongoing productivity of the commercial (not currently relevant), recreational and Aboriginal fisheries from the Project can be managed through the conditions of the proposed authorization, which includes avoidance, mitigation, and offsetting measures, along with adaptive management processes and supplementary and other measures to manage for uncertainties in future fisheries productivity. The Province of BC has responsibility over the freshwater fisheries affected by the Project and has developed Fisheries Management Objectives aimed at maintaining ecosystem integrity and productivity, while enabling sustainable use. DFO, the Province and BC Hydro are participating in a Site C Fisheries and Aquatic Habitat Mitigation and Monitoring Technical committee with the aim of ensuring that Project effects and associated monitoring, mitigation and offsetting occur in line with FMOs. The public interest was considered as part of the s.6 considerations, and included issues

.../13

s.21(1)(b)
s.23

raised by the public related to methylmercury increases, the effectiveness of fish passage and impacts to recreation and Aboriginal fisheries. These public interest issues are addressed either in the federal Decision Statement or in Conditions of the Authorization (e.g., the requirement for a fish passage management plan, requirement for mitigation, offsetting and monitoring, etc.).



DFO is relying on a variety of measures and actions that have been informed by Indigenous consultations including:

- the conditions in the proposed *Fisheries Act* authorization that ensure sustainability and ongoing productivity of the fishery, which are supported by long-term monitoring , adaptive management and supplementary and other measures;
- the measures included in the conditions of the BC Water License permit and in the Site C Federal Decision Statement conditions, which support the sustainability and ongoing productivity of recreational and Aboriginal fisheries;
- existing and ongoing effort by BC Hydro and BC Government related to accommodation and other measures to address potential infringements on Indigenous treaty rights; and
- in recognition of the concerns raised by Indigenous groups, DFO is making a genuine commitment to provide for ongoing Indigenous engagement and dialogue to further minimize residual impacts to fishing rights resulting from the project activities. In this regard, DFO has included Condition 7 in the Authorization that requires BC Hydro to collaborate with Indigenous groups to improve information sharing, participate in monitoring activities, identify opportunities to further address impacts to current use of fisheries resources for traditional purposes, and provide Indigenous groups with capacity funding to support these activities.

RECOMMENDATIONS TO THE REGIONAL DIRECTOR GENERAL

It is recommended that the Regional Director General approve the attached Considerations Under Section 6 of the *Fisheries Act* document (**Attachment 8**) and issue the Authorization under Paragraph 35(2)(b) of the *Fisheries Act* for works, undertakings or activities associated with the Site C Main Civil Works and Facility Operations to BC Hydro, and sign the attached Start the Clock letter, S. 35(2) authorization, cover letter and Sign-off form (**Attachments 9, 5, 10, 11**).

Cheryl Webb
Regional Director

- ☐ I concur with the recommendations
- ☐ I do not concur with the recommendations

Rebecca Reid
Regional Director General

Regional Director General's Comments:

Attachments: (11)

- 1) Joint Review Panel Report- 2014
- 2) Site C Federal Decision Statement - 2014
- 3) Serious Harm Determination Record (SHDR) for the Site C main civil works and facility operations.
- 4) Aboriginal Consultation Record and Issues Tracker
- 5) *Fisheries Act* Authorization -Site C main civil works and facility operations (15-HPAC01160).
- 6) Provincial Water Licence Rational document - 2016
- 7) BC Environmental Assessment Certificate conditions 2014
- 8) Checklist for Consideration of the Factors set out in Section 6 of the *Fisheries Act*
- 9) DFO Start the Clock Letter
- 10) *Fisheries Act* Authorization Cover Letter
- 11) Request for Approval for *Fisheries Act* Authorization



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

GCCMS #: 2016-505-00037
EKME# : 3648892v1

To: Rebecca Reid, Regional Director General
Pour:

Date:

Object: **SITE C CLEAN ENERGY PROJECT ISSUANCE OF FISHERIES ACT S.35(2)(B)**
Objet: **AUTHORIZATION FOR SITE C MAIN CIVIL WORKS AND FACILITY OPERATIONS**

From / De: Cheryl Webb, Regional Director, EMB

Via:

Additional approvals:
Autre(s) approbation(s):

☒ Your Signature
Votre signature

☐ Information

☐ For Comments
Observation

☐ Material for the RDG
Documents pour le

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur:

B. Fanos, Regulatory Review Manager, Fisheries Protection Program (604-666-3909)



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

2016-009-00753

MEMORANDUM FOR THE MINISTER

**MEETING WITH ELIZABETH MAY
(INFORMATION)**

SUMMARY

You will meet with the Honorable Elizabeth May, Leader of the Green Party of Canada and Member of Parliament for Saanich - Gulf Islands in BC.

Ms. May would like to discuss: the Site C project in BC; Fisheries and Ocean's Canada's intended appeal of the decision in the case brought by Alexandra Morton to the Minister of Fisheries and Oceans and Marine Harvest, Inc.; and the DFO lease to the Salt Spring Island Harbor authority.

The meeting is scheduled for June 28, 2016.

A scenario note and suggested messages are attached (Tab 1). Additional background about the Department's involvement in the Site C Project is attached in Tab 2.

Catherine Blewett
Deputy Minister

Leslie MacLean
Associate Deputy Minister

Attachments (2)

Tab 1 – Scenario Note

Tab 2 – Briefing Material on Site C Project

SECRET

SCENARIO NOTE

Meeting with Elizabeth May on June 24, 2016

Overview

You will meet with the Honorable Elizabeth May, Leader of the Green Party of Canada and Member of Parliament for Saanich - Gulf Islands in BC. Ms. May would like to discuss: the Site C project in BC; DFO's intended appeal of the decision in the case brought by Alexandra Morton to the Minister of Fisheries and Oceans and Marine Harvest, Inc.; and the DFO lease to the Salt Spring Island Harbor authority.

1. Status Update on Current *Fisheries Act* Application for Site C

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations, and that these effects cannot be mitigated. The Governor in Council (GIC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally-binding conditions.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. These proposed site preparation works are well understood and the mitigation and offsetting measures are expected to ensure the ongoing productivity and sustainability of fisheries resources.

On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the project. DFO is currently reviewing the second application for the main civil works (i.e. construction of the dam, generating station and spillways, and reservoir filling). Operations of the Site C facility are included in the second application, and as a result no further applications for authorizations under the *Fisheries Act* are anticipated.

BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

On January 25, 2016, DFO advised BC Hydro that their current application for a *Fisheries Act* authorization was complete but the 90- day time limit for DFO to make a decision on their application under the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* ceases to apply as Indigenous consultation is required.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review.

SECRET

DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

Given the complexities of the issues surrounding First Nations consultations, the timing of a decision of the second *Fisheries Act* application is currently uncertain, but a decision is not likely for several weeks. The Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.

Objectives

Your objective is to communicate the Department's commitment to a thorough and timely review of the current application for the Site C project.

Key Messages

- **My Department has received and is reviewing BC Hydro's current application for a *Fisheries Act* authorization for the Site C project.**
- **My Department is committed to ensuring the impacts of the project to fish and fish habitat are fully considered and addressed to the extent possible, through the implementation of mitigation, offsetting and monitoring programs.**
- **DFO is actively consulting potentially affected Indigenous groups prior to making a decision on the application for authorization.**
- **As the review of the application proceeds, DFO is also continuing to work with BC Hydro, Indigenous groups, and other parties implicated in the Site C project.**

2. Morton v. Marine Harvest Appeal

On May 7, 2013, Ms. Alexandra Morton, as represented by Ecojustice, filed a Notice of Application against the Minister of Fisheries and Oceans and Marine Harvest Canada Inc. The Applicant claimed that Marine Harvest Canada transferred Piscine Reo-virus (PRV) positive fish to its Shelter Bay finfish facility, contrary to s.56 of the *Fishery (General) Regulations*, which prohibits transfers of fish having disease or disease agents.

In essence, the focus of the application was that the Minister lacked the authority to allow the transfer of diseased fish, and that the Minister improperly delegated this discretionary decision making authority to approve this transfer.

SECRET

Justice Rennie determined that two conditions, 3.1(b) (ii) and (iv), relating to fish transfers in marine finfish aquaculture licences are invalid and have no force and effect.

In fall 2015, the Department amended the relevant finfish conditions of licence in order to accommodate the court's decision. These new conditions are the subject of a second judicial review filed by Ms. Morton. However, a decision to appeal the decision of the Federal Court in the first instance was made under the responsibility of the Attorney General of Canada in consultation with senior management at DFO.

s.21(1)(b)

s.23

Canada's appeal is based on the following errors: the Federal Court erred by failing to apply/improperly applying the correct standard of review; imposing a reverse onus on the Minister, admitting irrelevant/inadmissible evidence re PRV; and making/acting upon erroneous and/or irrelevant findings of fact and inferences of fact.

Marine Harvest Canada's appeal is based on the following errors: the Federal Court erred in law by not placing the evidentiary onus on the applicant; by making findings of fact (heart and skeletal muscle inflammation (HSMI) found in Canada and that PRV is its viral precursor) without evidence resulting in an error of law/ in finding that PRV may be harmful to the protection and conservation of fish under 56(b) FGR; failed to apply the appropriate standard of review; erred in law in concluding that the conditions of licence were inconsistent with s56 of FGR; erred in law by erroneously applying the precautionary principle to the question of the Minister's decision to issue the Licence; erred in law by reviewing the reasonableness of the conditions of licence separately rather than cumulatively; and erred in law in determining that the Minister had improperly delegated a discretionary decision.

On October 28, 2015, Alexandra Morton filed a further judicial review concerning the transfer of fish to fish farms in the amended conditions of finfish aquaculture licences in BC.

Specifically, it is alleged that the Transfer Conditions in the 2015 amended finfish licences establish an improper blanket authorization to transfer fish and are unlawful because they are narrower than what is required by s.56 of the *Fishery (General) Regulations*.

On November 16, 2015, the Federal Court ordered that this application is stayed, pending disposition of the appeals of Justice Rennie's order in the initial judicial review.

On April 14, 2016, Ms. Elizabeth May, M.P. and Leader of the Green Party of Canada, sent a letter to Minister Tootoo asking for the crown to reconsider its appeal of the May 6, 2015 decision by Justice Rennie.

Since that time, Fisheries and Oceans Canada has also received form letters from various First Nations, citizens and environmental groups making similar requests.

The Federal Court of Appeal was scheduled to hear the consolidated appeals of the Minister of Fisheries and Oceans and Marine Harvest Canada on May 26, 2016.

SECRET

Based on new evidences gathered very recently by the Department, information pursuant to which the HSMI disease might have been found in farmed salmon in BC has been disclosed to the public on May 20, 2016.

As that information might have an impact on the parties' positions in the May 26th appeal hearing, the most reasonable approach was to postpone the appeal. The court accepted the postponement request to fall 2016. This postponement gives the parties some time to consider the impact of that new information on their legal positions in the appeal, and give DFO some time to consider the impact of that new information on its approach to the management of fish transfers in BC.

Objectives

Your objective is to communicate the Department's commitment to ensuring the health and safety of the aquatic environment, and this is reflected in all of our activities related to aquaculture management, and to communicate that as this issue is currently before the courts, it would not be appropriate for me to comment further at this time.

Key Messages

- **My department is committed to ensuring the health and safety of the aquatic environment, and this is reflected in all of our activities related to aquaculture management.**
- **As this issue is currently before the court, it would not be appropriate for me to comment further at this time.**

3. DFO lease to the Salt Spring Island Harbour authoritytatus

To follow



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

2016-009-00753

MEMORANDUM FOR THE MINISTER

**MEETING WITH ELIZABETH MAY
(INFORMATION)**

SUMMARY

You will meet with the Honorable Elizabeth May, Leader of the Green Party of Canada and Member of Parliament for Saanich - Gulf Islands in BC.

Ms. May would like to discuss: the Site C project in BC; Fisheries and Oceans Canada (DFO)'s intended appeal of the decision in the case brought by Alexandra Morton to the Minister of DFO and Marine Harvest, Inc.; and the DFO lease to the Salt Spring Island Harbor authority.

The meeting is scheduled for [date].

A scenario note and suggested messages are attached (Tab 1). Additional background about the Department's involvement in the Site C Project is attached in Tab 2.

Catherine Blewett
Deputy Minister

Leslie MacLean
Associate Deputy Minister

Attachments (2)

Tab 1 – Scenario Note

Tab 2 – Briefing Material on Site C Project

SECRET

SCENARIO NOTE

Meeting with Elizabeth May on [date]

Overview

You will meet with the Honorable Elizabeth May, Leader of the Green Party of Canada and Member of Parliament for Saanich - Gulf Islands in BC. Ms. May would like to discuss: the Site C project in BC; DFO's intended appeal of the decision in the case brought by Alexandra Morton to the Minister of DFO and Marine Harvest, Inc.; and the DFO lease to the Salt Spring Island Harbor authority.

1. Status Update on Current *Fisheries Act* Application for Site C

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations, and that these effects cannot be mitigated. The Governor in Council (GIC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally-binding conditions.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. These proposed site preparation works are well understood and the mitigation and offsetting measures are expected to ensure the ongoing productivity and sustainability of fisheries resources.

On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the project. DFO is currently reviewing the second application for the main civil works (i.e. construction of the dam, generating station and spillways, and reservoir filling). Operations of the Site C facility are included in the second application, and as a result no further applications for authorizations under the *Fisheries Act* are anticipated.

BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

On January 25, 2016, DFO advised BC Hydro that their current application for a *Fisheries Act* authorization was complete but the 90- day time limit for DFO to make a decision on their application under the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* ceases to apply as Indigenous consultation is required.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review.

SECRET

DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

Given the complexities of the issues surrounding First Nations consultations, the timing of a decision of the second *Fisheries Act* application is currently uncertain, but a decision is not likely for several weeks. The Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.

Objectives

Your objective is to communicate the Department's commitment to a thorough and timely review of the current application for the Site C project.

Key Messages

- **My Department has received and is reviewing BC Hydro's current application for a *Fisheries Act* authorization for the Site C project.**
- **My Department is committed to ensuring the impacts of the project to fish and fish habitat are fully considered and addressed to the extent possible, through the implementation of mitigation, offsetting and monitoring programs.**
- **DFO is actively consulting potentially affected Indigenous groups prior to making a decision on the application for authorization.**
- **As the review of the application proceeds, DFO is also continuing to work with BC Hydro, Indigenous groups, and other parties implicated in the Site C project.**

2. Morton v. Marine Harvest Appeal

On May 7, 2013, Ms. Alexandra Morton filed a Notice of Application against the Minister of Fisheries and Oceans and Marine Harvest Canada Inc. The Applicant claimed that Marine Harvest Canada transferred Piscine Reo-virus (PRV) positive fish to its Shelter Bay finfish facility, contrary to s.56 of the *Fishery (General) Regulations* (FGR), which prohibits transfers of fish having disease or disease agents.

In essence, the focus of the application was that the Minister lacked the authority to allow the transfer of diseased fish, and that the Minister improperly delegated this discretionary decision making authority to approve this transfer. Justice Rennie determined that two sub-sections of one licence condition, relating to fish transfers in marine finfish aquaculture licences, are invalid and have no force and effect.

SECRET

In fall 2015, the Department deleted one of the relevant finfish conditions of licence and amended the other to accommodate aspects of the court's decision.

s.21(1)(b)
s.23

On October 28, 2015, Morton filed another judicial review concerning the amended conditions of finfish aquaculture licences in BC. Specifically, it is alleged that the aquaculture licence transfer conditions establish an improper blanket authorization to transfer fish and are unlawful because they are narrower than s.56 of the FGR. However, the parties and the Federal Court agreed to put this application into abeyance until the outcome of the initial judicial review.

On April 14, 2016, Ms. Elizabeth May, M.P. and Leader of the Green Party of Canada, sent a letter to Minister Tootoo asking for the crown to reconsider its appeal of the May 6, 2015 decision by Justice Rennie. Since that time, DFO has also received form letters from various First Nations, citizens and environmental groups making similar requests.

The appeal hearing was set for May 26, 2016. However, DFO Science had identified the presence of a disease similar to HSMI in samples collected from an aquaculture facility in BC and this finding was publicly disclosed on May 20, 2016. As that information might have impacted the parties' positions in the appeal hearing, DFO requested and was granted a postponement of the hearing to fall 2016. DFO is now considering dropping the appeal.

Parallel to the court case, in summer 2015, DFO Science thoroughly reviewed potential impacts of PRV and HSMI on the west coast of North America. This review concluded that there is a low likelihood PRV would have a significant impact on wild Pacific salmon populations. DFO Science continues to assess the link between PRV and HSMI and the risks of PRV to wild fish.

Objectives

Your objective is to communicate the Department's commitment to ensuring the health and safety of the aquatic environment, and this is reflected in all of our activities related to aquaculture management, and to communicate that as this issue is currently before the courts, it would not be appropriate for me to comment further at this time.

Key Messages

- **My department is committed to ensuring the health and safety of the aquatic environment, and this is reflected in all of our activities related to aquaculture management.**
- **The recent court decision deals with two sub-sections of one licence condition out of more than 140 conditions of licence that are normally associated with marine finfish aquaculture facilities in B.C. My Department is reviewing aquaculture licence conditions in BC, as we do**

SECRET

every year, to ensure that all environmental risks are adequately addressed.

- **As this issue is currently before the court, it would not be appropriate for me to comment further at this time.**

3. DFO lease to the Salt Spring Island Harbour authority

The Harbour Authority of Salt Spring Island (HASSI) is a not-for-profit entity that manages six Small Craft Harbours (SCH) on Salt Spring Island (SSI) under a lease agreement with DFO-SCH. The HASSI Board of Directors is comprised of commercial fishing representatives and other local recreational fishing and community interests. HASSI has successfully managed its responsibilities for twenty-five years and the Department's understanding is that it remains compliant with all Industry Canada regulations under the *Canada Not for Profit Corporations Act*.

This meeting topic may result from concerns expressed by the Capital Regional District's (CRD) SSI elected official. The CRD is the local government authority for the Southern Gulf Islands.

Flowing from a long standing property dispute between HASSI and a Ganges restaurant owner operating without agreement on SCH property, the CRD SSI elected official has raised concerns to HASSI, SCH and to the public. This has been done through local CRD commissions and newspapers, regarding the lack of local government representation on the HASSI Board and perceptions that HASSI is operating in a non-transparent manner. The CRD SSI elected official has also expressed his view that the CRD may be better placed to manage the Ganges SCH site associated with the property dispute.

The CRD SSI elected official may have also raised concerns that, in response to his request, HASSI provided a redacted copy of the DFO-HASSI lease agreement. In response to concerns raised to SCH in April 2016, the CRD SSI elected representative has since received a full copy of the lease in late June through the DFO Access to Information and Privacy Secretariat (A-2016-00064).

SCH has discussed the property issue and broader concerns with all parties including the CRD SSI elected official on numerous occasions over the past year in an effort to seek resolution through an open and collaborative process. These discussions have helped respond to some apparent CRD misunderstandings regarding the SCH program, harbour authority governance, past HASSI attempts to resolve issues and longer-term harbour planning and potential divestiture processes. SCH has also clarified its legal property rights and interests (e.g. legal access, safety and other risks) for the Ganges area of concern in response to CRD applications made to Provincial agencies to acquire the SCH property without prior consultation.

SCH has recently confirmed a plan with CRD staff, various Province of British Columbia ministries, HASSI and the Ganges restaurant owner that will allow continued operation of the business in the short-term (i.e. over the next 1-2 years) while addressing key DFO and HASSI

SECRET

risks and liabilities. All parties have also agreed to a process to review longer-term solutions with the initial evaluation of options planned for this fall.

Although HASSI has an elected community representative on their Board, SCH understands that they are prepared to consider the CRD request for local government inclusion on their Board subject to further information and discussion with CRD.

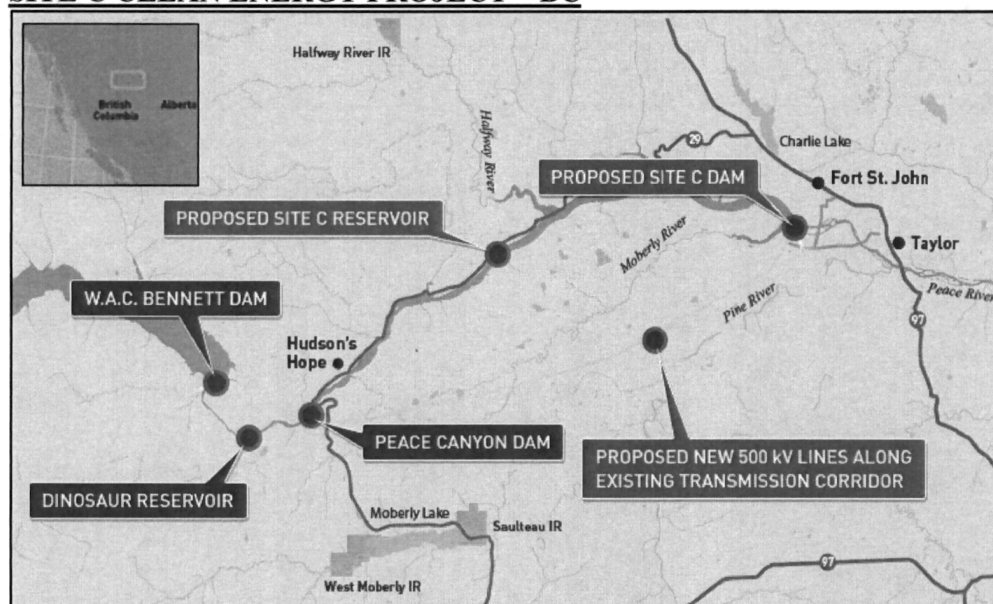
Objectives

Your objective is to communicate the Department's commitment to continue to work collaboratively with the CRD, HASSI and other parties to develop and implement a longer-term solution to address the Ganges property issue and to explore other areas of interest.

Key Messages

- **Federally incorporated not-for-profit Harbour Authorities such as HASSI are regulated by Industry Canada under the Canada Not-for-Profit Corporations Act.**
- **Decisions regarding Board membership, bylaws, policies etc. are made by HASSI membership, not DFO.**
- **DFO encourages Harbour Authorities and local governments to work collaboratively to build relationships and address local community issues and needs.**
- **The Department remains committed to working collaboratively with all key parties (e.g. Capital Regional District, Islands Trust, Province of British Columbia, HASSI, etc.) to develop and implement long-term property options for the Ganges area that would meet the objectives of all parties.**

SITE C CLEAN ENERGY PROJECT – BC



Background

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project) - the third hydroelectric dam in a series of dams on the Peace River in northeast BC. The project is estimated to have a capital cost of \$8.3 billion and create approximately 8,000 person-years of employment. The proponent also contends that the project will provide clean, reliable and affordable electricity for 450,000 homes per year for more than 100 years.

As proposed, the project will be an earth fill dam, approximately 1,050 metres in length, and 60 metres high above Peace River. Reservoir creation will result in 83 kilometres of the Peace River being flooded to two to three times the current width.

A Canada-British Columbia joint review panel (the Panel) concluded that the project would result in significant adverse environmental effects including significant cumulative effects on Aboriginal peoples and Treaty rights, and to fish and fish habitat which cannot be mitigated. Governor in Council (GiC) determined that the environmental effects are justified and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which the proponent must legally comply.

On September 30, 2015, Fisheries and Oceans Canada (DFO) issued a *Fisheries Act* authorization for site preparation works. Potentially affected Aboriginal groups were consulted on the proposed works and offsetting plan. On December 15, 2015, the proponent submitted a second application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling) and for project operations. This application is under review by DFO. The 90 day time limit is on hold during indigenous consultation.

DFO has been advised by the proponent that they would like to have the *Fisheries Act* authorization issued in June 2016 to avoid significant financial risks associated with construction delays.

Fisheries Impacts

Impacts on fish and fish habitat in the Peace River are anticipated to result from the construction the main civil works, creation of the project reservoir, and from impaired upstream fish passage due to the dam. Fish entrainment during operation may also result in an ongoing effect on fisheries productivity in the Peace River.

Flooding for reservoir creation will permanently alter existing riverine aquatic ecosystem, resulting in a large oligotrophic reservoir that may reduce abundances of some fish species (e.g., Arctic grayling and mountain whitefish) and increase abundances of other species (e.g., lake whitefish and kokanee). It is uncertain if the proponent's prediction of a significant increase in mountain whitefish abundance and expansion in the range of some salmonid species (e.g., Arctic grayling and bull trout) downstream will occur.

There may be some impacts on species identified as being at risk.

Mitigation & Offsetting

The proponent has proposed standard avoidance and mitigation measures (e.g., fish salvage and isolation, erosion and sediment control, etc.) for construction activities associated with the main civil works.

To offset effects associated with the construction footprint and reservoir filling, the proponent has proposed to conduct: excavation and shoreline contouring to reduce fish stranding and enhance fish habitat; side-channel habitat enhancement downstream of the dam site; reservoir shoreline enhancement to create shallow water littoral habitats; and reservoir shoreline riparian planting. The proponent has also proposed an adaptive management approach as part of its Fisheries and Aquatic Habitat Monitoring and Follow-up Program to support future mitigation and offsetting options after reservoir creation based on follow-up monitoring.

Indigenous Consultation

In August 2015, the Federal Court dismissed an application for judicial review of the decision of the GiC from the Prophet River First Nation and West Moberly First Nation. In September 2015, these groups appealed the Federal Court decision to the Federal Court of Appeal (FCA). A hearing date for the appeal in the FCA has been set for a period of one day on September 14, 2016.

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to the Prime Minister and other cabinet ministers (including the Minister of Fisheries, Oceans and the Canadian Coast Guard) requesting a review of the federal decision to approve the project. The Nations have asked the Government to work with them to establish a comprehensive framework for engagement on major development projects.

In a letter dated March 9, 2016, the West Moberly and Prophet River First Nations requested that a Ministerial-level meeting be set-up in Ottawa and that processing and issuance of all federal permit applications for Site C be put on hold until a Federal Court of Appeal decision is made on their legal challenge of the conclusion of the environmental assessment. A response was sent on May 20, 2016 by the former Minister of DFO indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C project. The Minister is likely to have a teleconference as soon as possible with Chiefs of the West Moberly and Prophet River First Nations to further discuss this issue.

The proponent is engaged in ongoing consultation with Indigenous groups related to construction and operation of the Site C dam, and is working with groups to develop impact benefit agreements.

Monitoring & Enforcement

On October 20, 2015, the proponent became aware that the construction of a causeway in the Peace River was being constructed in a different location than authorized by DFO. The proponent ceased further work on the causeway. On December 16, 2015, DFO issued a warning letter to the proponent advising them that the causeway construction works in the Peace River resulted in a failure to comply with the conditions of their authorization. DFO is continuing to monitor this project to ensure compliance with the authorization.

On April 7, 2016, the BC Environmental Assessment Office issued an unrelated Enforcement Order under the BC *Environmental Assessment Act* to BC Hydro for non-compliance with the Environmental Assessment Certificate, requiring immediate measures to control construction runoff and sediment.

Strategic Considerations, Key Issues & Next Steps

DFO is currently reviewing an application for a *Fisheries Act* Authorization for project components related to construction of the main civil works and for project operations.

Given the complexities of the issues surrounding Indigenous consultation, the timing of a decision of the second *Fisheries Act* application is currently uncertain, but a decision is not likely for several weeks. The Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

2016-009-00688

MEMORANDUM FOR THE MINISTER'S CHIEF OF STAFF

s.19(1)

**MEETING WITH BC HYDRO ABOUT THE SITE C HYDRO PROJECT
(FOR INFORMATION)**

SUMMARY

You will meet with [REDACTED] BC Hydro, to discuss the Site C Project (the "Project").

[REDACTED] would like to discuss the status of the current application for a *Fisheries Act* authorization and the critical path forward for BC Hydro's Site C Clean Energy Project. BC Hydro has expressed concerns with potential financial impacts to the project related to the timeline for the issuance of their *Fisheries Act* authorization.

The meeting is scheduled for June 23, 2016 from 10 to 10:45 am.

A scenario note and suggested messages are attached (**Tab 1**). Additional background about the Department's involvement in the Project is attached in **Tab 2**. A meeting summary is also attached (**Tab 3**) for your information of a meeting held on June 17, 2016 with the Nun wa dee Stewardship Society who represent key First Nation stakeholders.

Catherine Blewett
Deputy Minister

Attachments (3):

TAB 1 - Scenario Note

TAB 2 – Briefing Material on Site C Project

TAB 3 – Meeting Summary from June 17, 2016 meeting with Nun Waa Dee Stewardship Society

SCENARIO NOTE

Meeting with BC Hydro on June 23, 2016

s.19(1)

Overview

You will meet with [REDACTED] BC Hydro to discuss the Site C Project (the "Project"). [REDACTED] will likely want to discuss the status of the *Fisheries Act* authorization and the critical path forward for BC Hydro's Site C Clean Energy Project. BC Hydro has expressed concerns with potential financial impacts to the project related to the timeline for the issuance of the *Fisheries Act* authorization.

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations, and that these effects cannot be mitigated. The Governor in Council (GIC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally-binding conditions.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. These proposed site preparation works are well understood and the mitigation and offsetting measures are expected to ensure the ongoing productivity and sustainability of fisheries resources.

Fisheries and Oceans Canada (DFO) is currently reviewing the second application for the main civil works (i.e. construction of the dam, generating station and spillways, and reservoir filling). Operations of the Site C facility are included in the second application, and as a result no further applications for authorizations under the *Fisheries Act* are anticipated.

Your overall objective for the meeting is to provide a status update on the review of the current *Fisheries Act* application; to provide an update on Indigenous consultations on the application and to communicate the Department's commitment to a timely review of the current application.

1. Status Update on Current *Fisheries Act* Application

On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

On January 25, 2016, DFO advised BC Hydro that their current application for a Fisheries Act authorization was complete but the 90- day time limit for DFO to make a decision on their application under the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* ceases to apply as Indigenous consultation is required.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

Objectives

Your objective is to communicate the Department's commitment to a timely review of the current application.

Key Messages

- **My Department has received and is reviewing BC Hydro's current application for a *Fisheries Act* authorization for the Site C project.**
- **My Department is committed to ensuring the impacts of the project to fish and fish habitat are fully considered and addressed to the extent possible, through the implementation of mitigation, offsetting and monitoring programs.**
- **My Department is committed to a timely review of the current application and as part of this process is committed to completing the required Indigenous consultations.**

2. Update on Indigenous Consultations

Some First Nation groups are opposed to the project. In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights.

In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for the appeal to be heard by the Federal Court of Appeal on September 14, 2016.

s.21(1)(b)

In a March 2016 letter to the Minister of Environmental and Climate Change Canada (ECCC) and copied to DFO, the West Moberly and Prophet River First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that “no position” be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

The Minister of ECC met with the Chiefs on March 1, 2016, and as follow up to that meeting, and by way of response to the First Nations’ March 2016 letter, the Minister of ECCC responded on April 4, 2016 to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to the Minister of DFO and other relevant Ministers for response.

A response letter was sent on May 20, 2016, from the former Minister indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. A meeting date was established but had to be cancelled due to scheduling issues with the new Minister. The Minister’s office has reached out to the First Nations to reschedule the meeting and the Minister’s office is currently awaiting a response.

Over the past five months, DFO has made significant and consistent attempts on many occasions to arrange working-level meetings with the West Moberly and Prophet River First Nations. These efforts were made through email, letters, phone calls and opportunistic office visits, but were unsuccessful at arranging a meeting. On June 17, 2016 a meeting was held with the Nun waa dee Stewardship Society who represent the West Moberly and Prophet River First Nations.

At the meeting, the Nun waa dee raised issues primarily about the consultation process and did not engage in a technical discussion about the current *Fisheries Act* application. A key issue raised at the meeting was concerning the issuance of a *Fisheries Act* authorization before a Federal Court of Appeal decision on their appeal. The Nun wa dee is of the view that the Minister's May 20, 2016 letter which states DFO "...will continue consideration of the *Fisheries Act* authorization application..." suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the Federal Court of Appeal decision.

A more detailed summary of the meeting is attached (Tab 3).

There are also unresolved issues on the current *Fisheries Act* application arising from consultations with two other key First Nation stakeholders, the Blueberry River First Nation (BRFN) and the Sauteau First Nation. A DFO working-level meeting took place with BRFN on May 25, 2016. At the meeting BRFN raised concerns regarding cumulative effects of development projects in BRFN territory, capacity funding concerns related to consultation, concerns related to methylmercury in fish and associated effects on human health, concerns related to monitoring and enforcement, and issues pertaining to impacts on BRFN Treaty rights.

An April 21, 2016 letter from the Sauteau First Nation to the Ministers of ECCC and Indigenous and Northern Affairs Canada identifies concerns related to the project, Treaty rights, the

environmental assessment process as well as historical impacts of hydro developments on the Peace River.

s.21(1)(b)

s.23

Objectives

Your objective will be to reiterate that the Department will continue consideration of the current *Fisheries Act* application for the Project and communicate that the Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.

Key Messages

- **DFO is actively consulting potentially affected Indigenous groups prior to making a decision on the application for authorization.**
- **As the review of the application proceeds, DFO is also continuing to work with BC Hydro, Indigenous groups, and other parties implicated in the Site C project.**
- **Given the complexities of the issues surrounding First Nations consultations, the timing of a decision on the second *Fisheries Act* application is not likely for several weeks. The Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.**

**Pages 259 to / à 261
are duplicates of
sont des duplicatas de la
page 94**

s.21(1)(b)

Meeting Summary of DFO's Meeting with Nun wa Dee Stewardship Society

June 17, 2016

Prepared by DFO Pacific Region Staff

1. Issuance of an Authorization before a federal Appeal decision: Nun wa dee (NWD) is of the view that the Minister's May 20, 2016 letter which states DFO "...will continue consideration of the Fisheries Act authorization application..." suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the federal Court of Appeal Decision. In this regard, future DFO responses to NWD on this matter should clarify in simple "Yes" or "No" terms on whether DFO will place a moratorium on issuance of the authorization pending the federal court decision.

2. The Statutory Decision-maker: NWD made note that they were very disappointed that the appropriate individuals with the authority to deal with issues related to impacts on their Treaty rights were not present at the meeting. In their view this individual would be a Statutory decision-maker on the regulatory application, and the presence of such an individual during the consultation process is required for meaningful engagement in consultation.

3. Capacity Funding: There was no specific request to DFO for capacity funding, however, this was stressed as a large impediment in terms of capacity for NWD to be meaningful engaged in consultation on the regulatory application. NWD may not have made such a request because TC advised that there is no capacity funding at their morning meeting.

4. Consultation Plan/Process: NWD expressed concern that DFO has no formal process for consultation. NWD has had consultation arrangements with the province for several years similar to what was outlined in NWD's proposed consultation plan. DFO described their consultation process to NWD which mainly consisted of sending a letter to Aboriginal groups requesting input on the Authorization Application, receiving input and DFO addressing and/or incorporating the input into the Authorization conditions. At NWD's request, DFO also explained the project review process (i.e. Request For Review and Application for Authorization review steps). DFO also advised NWD that DFO is at the advanced stages of the authorization process. NWD is of the view that DFO's consultation process is inadequate and insufficient to engage in meaningful consultation. They made note of the importance of relationship building and the importance of having a dedicated policy on the Aboriginal consultation process along with an Aboriginal engagement team to build relationships with Aboriginal groups and implement the consultation policy.

5. Next Steps: NWD to discuss their next steps internally and with the West Moberly FNs and Prophet River FN Chiefs [REDACTED] They made mention of additional meetings, however no dates or timelines were established.

[Note: NWD represented the interests of the West Moberly and Prophet River First Nations at the meeting]



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

Solicitor-Client and Litigation Privilege

2016-009-00627

MEMORANDUM FOR THE MINISTER

**SCENARIO NOTE FOR THE MINISTER: MEETING WITH WEST MOBERLY FIRST NATIONS
CHIEF WILLSON & PROPHET RIVER FIRST NATION CHIEF LYNETTE TSAKOZA
(FOR INFORMATION)**

SUMMARY OF ADVICE TO THE MINISTER

You will speak with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). A scenario note and suggested messages are attached (**Tab 1**).

The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (**Tab 2**) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

This conversation is another attempt to fulfill the Government of Canada's duty to consult with First Nations in order to complete our review for a *Fisheries Act* authorization request made by BC Hydro.

The time and date of the call has not yet been finalized.

Departmental representatives from Ecosystems and Fisheries Management are available to support you.

Other relevant correspondence is also provided and includes a March 9, 2016 letter from the West Moberly and Prophet River First Nations (**Tab 3**) and the response provided by the Minister of Environment and Climate Change (**Tab 4**).

Additional background information on the Project is also provided in **Tab 5**.

Catherine Blewett
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachments (5):

- TAB 1 - Scenario Note
- TAB 2 - Letter from Fisheries and Oceans Canada dated May 20, 2016
- TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016
- TAB 4 - Letter from Environment and Climate Change Canada dated April 4, 2016
- TAB 5 - Background Information on Site C Project

SECRET

Solicitor-Client and Litigation Privilege

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations

s.21(1)(a)

s.21(1)(b)

Overview

You will speak with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (**Tab 2**) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision. They alleged, among other things, that the information before the GiC could not support a finding of justification, and that the GiC, in determining whether the Project was justified, ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016, in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g., construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

[REDACTED]

SECRET

Solicitor-Client and Litigation Privilege

DFO is coordinating Indigenous consultations on the current *Fisheries Act* application to the extent possible with Transport Canada, who are currently in receipt of an application for a federal permit for the Project under the *Navigation Protection Act*. Depending on the outcome of outstanding consultations, DFO may be in a position to make a decision on the current *Fisheries Act* application before Transport Canada makes their decision. As a result, discussions are likely to be held in the coming days within the federal family about whether decisions on the current applications before Transport Canada and DFO can be announced simultaneously.

In a March 2016 letter to the Minister of Environment and Climate Change and copied to DFO (Tab 3), the First Nations requested that the processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

Minister McKenna met with the Chiefs on March 1, 2016, and as follow-up to that meeting, and by way of response to the First Nations' March 2016 letter, she responded on April 4, 2016, to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response (Tab 4).

A response letter was sent on May 20, 2016, from your predecessor (Tab 2) indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project.

From December 22, 2015, to present, DFO has conducted First Nations consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

In the case of the Prophet River and West Moberly First Nations, significant and consistent efforts have been made by DFO to arrange a meeting over the past five months through email, letters, phone calls and opportunistic office visits, with very limited return engagement. To date DFO has been successful at securing only one meeting with representatives of the West Moberly and Prophet River First Nations (the Nun wa dee Stewardship Society) on June 17, 2016, to discuss the main civil works application.

A key issue raised at the June 17, 2016, meeting with regional DFO staff was concerning the issuance of a *Fisheries Act* authorization before a Federal Court of Appeal decision on the appeal. It was communicated that the West Moberly and Prophet River First Nations are of the view that Minister Tootoo's May 20, 2016, letter, which states DFO "...will continue consideration of the *Fisheries Act* authorization application...", suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the Federal Court of Appeal decision.

SECRET

Solicitor-Client and Litigation Privilege

s.21(1)(a)

s.21(1)(b)

Objectives

Your overall objectives for the meeting are:

- to have an “on the record” conversation;
- to communicate the Department’s commitment to a thorough and timely review of the current application, and;
- to communicate that the appeal hearing date set for September 14, 2016, does not influence DFO’s timing to proceed with making a decision on the current *Fisheries Act* application.

Key Messages

s.21(1)(a)

s.21(1)(b)

- **I support the Government's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples, and I understand my officials have made significant efforts to provide opportunities for input on the current application since December 2015.**
- **My Department is committed to consulting First Nations on major development projects. We are also committed to completing thorough, efficient and timely reviews of applications under the *Fisheries Act*.**
- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the Project, and that this issue is currently before the Federal Court of Appeal.**
- **I look forward to hearing your concerns since they are important for us to reach the completion of our review of the *Fisheries Act* authorization request on this project.**

•





Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

Solicitor-Client and Litigation Privilege

2016-009-00627

MEMORANDUM FOR THE MINISTER

**SCENARIO NOTE FOR THE MINISTER: MEETING WITH
WEST MOBERLY FIRST NATIONS CHIEF WILLSON & PROPHET RIVER
FIRST NATION CHIEF LYNETTE TSAKOZA
(FOR INFORMATION)**

SUMMARY OF ADVICE TO THE MINISTER

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). A scenario note and suggested messages are attached (**Tab 1**).

The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (**Tab 2**) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

This conversation is another attempt to fulfill the Government of Canada's duty to consult with First Nations in order to complete our review for a *Fisheries Act* authorization request made by BC Hydro.

The time and date of the meeting has not yet been finalized. Departmental representatives from Ecosystems and Fisheries Management are available to support you.

Other relevant correspondence is also provided and includes a letter from the West Moberly and Prophet River First Nations (**Tab 3**), the response provided by the Minister of Environment and Climate Change (**Tab 4**), a letter from Transport Canada (**Tab 5**) and a recent letter from Fisheries and Oceans Canada (**Tab 6**).

Additional background information on the Project is also provided in **Tab 7**.

Catherine Blewett
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachments (7):

- TAB 1 - Scenario Note
- TAB 2 - Letter from Fisheries and Oceans Canada dated May 20, 2016
- TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016
- TAB 4 - Letter from Environment and Climate Change Canada dated April 4, 2016
- TAB 5 - Letter from Transport Canada dated June 18, 2016
- TAB 6 - Letter from Fisheries and Oceans Canada dated July 7, 2016
- TAB 7 - Background Information on Site C Project

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations

Overview

- s.21(1)(a) You will meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (**Tab 2**) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.
- s.21(1)(b)

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision. They alleged, among other things, that the information before the GiC could not support a finding of justification, and that the GiC, in determining whether the Project was justified, ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016, in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g., construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application as soon as possible to avoid significant financial risks associated with construction delays.

DFO is coordinating Indigenous consultations on the current *Fisheries Act* application to the extent possible with Transport Canada, who are currently in receipt of an application for a federal permit for the Project under the *Navigation Protection Act*. The Canadian Environmental Assessment Agency is not involved in consultations with Indigenous groups on federal permitting.

Depending on the outcome of outstanding consultations, DFO may be in a position to make a decision on the current *Fisheries Act* application before Transport Canada makes its decision. Transport Canada and DFO are in agreement with this approach but are attempting to coordinate federal permitting decisions to the extent possible.

In a March 2016 letter to the Minister of Environment and Climate Change and copied to DFO (**Tab 3**), the First Nations requested that the processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that “no position” be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

Minister McKenna met with the Chiefs on March 1, 2016, and as follow-up to that meeting, and by way of response to the First Nations’ March 2016 letter, she responded on April 4, 2016, to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response (**Tab 4**).

A response letter was sent on May 20, 2016, from your predecessor (**Tab 2**) indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. On June 28, 2016, the Minister of Transport wrote to the Chiefs of the West Moberly and Prophet River First Nations to notify them that Transport Canada will continue to process the *Navigation Protection Act* application for the main civil works of the project (**Tab 5**).

From December 22, 2015, to present, DFO has conducted First Nations consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

In the case of the Prophet River and West Moberly First Nations, significant and consistent efforts have been made by DFO to arrange a meeting over the past five months through email, letters, phone calls and opportunistic office visits, with very limited return engagement. To date DFO has been successful at securing only one meeting with representatives of the West Moberly and Prophet River First Nations (the Nun wa dee Stewardship Society) on June 17, 2016, to discuss the main civil works application.

A key issue raised at the June 17, 2016, meeting with regional DFO staff was concerning the issuance of a *Fisheries Act* authorization before a Federal Court of Appeal decision on the appeal. It was communicated that the West Moberly and Prophet River First Nations are of the view that Minister Tootoo’s May 20, 2016, letter, which states DFO “...will continue

consideration of the *Fisheries Act* authorization application...", suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the Federal Court of Appeal decision.

s.21(1)(a)

s.21(1)(b)

In a letter following up on the June 17, 2016 meeting (**Tab 6**), DFO clarified that the Department will continue consideration of the *Fisheries Act* application, which includes review of the application, consultation with potentially affected Indigenous groups, and a decision on whether a potential authorization may be issued. The letter (**Tab 6**) also indicated that the Department is in the advanced stages of consideration of the *Fisheries Act* application.



Objectives

s.21(1)(a)

Your overall objectives for the meeting are:

s.21(1)(b)

- to have an “on the record” conversation;
- to communicate the Department’s commitment to a thorough and timely review of the current application, and;
- to communicate that the appeal hearing date set for September 14, 2016, does not influence DFO’s timing to proceed with making a decision on the current *Fisheries Act* application.

Key Messages

- **I support the Government’s commitment to a renewed, nation-to-nation relationship with Indigenous Peoples, and I understand my officials have made significant efforts to provide opportunities for input on the current application since December 2015.**
- **My Department is committed to consulting First Nations on major development projects. We are also committed to completing thorough, efficient and timely reviews of applications under the *Fisheries Act*.**
- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the Project, and that this issue is currently before the Federal Court of Appeal.**
- **I look forward to hearing your concerns since they are important for us to reach the completion of our review of the *Fisheries Act* authorization request on this project.**





Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SOLICITOR-CLIENT PRIVILEGE / SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**SCENARIO NOTE FOR THE MINISTER: MEETING WITH WEST MOBERLY FIRST
NATIONS CHIEF WILLSON & PROPHET RIVER FIRST NATION CHIEF LYNETTE
TSAKOZA, ON JUNE 13
(FOR INFORMATION)**

SUMMARY

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). Scenario note and suggested messages are attached (**Tab 1**).

The Chiefs will likely want to discuss your predecessor's May 20, 2016 response (**Tab 2**) to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

The meeting is scheduled for June 13, 2016.

The Honourable Marc Garneau, Minister of Transport may also attend. You will be accompanied by Departmental representatives from Ecosystems and Fisheries Management.

Other relevant correspondence is also provided and includes: a March 9, 2016 letter from the West Moberly and Prophet River First Nations (**Tab 3**) and the response provided by the Minister of Environment and Climate Change Canada (**Tab 4**).

Additional background information on the Project is also provided in **Tab 5**.

Leslie MacLean
A/ Deputy Minister

Attachments (5):

TAB 1 - Scenario Note

TAB 2 - Letter from Fisheries and Oceans Canada (DFO) dated May 20, 2016

TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016

TAB 4 - Letter from Environmental and Climate Change Canada dated April 4, 2016

TAB 5 - Background Information on Site C Project

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations on June 13, 2016

s.21(1)(a) **Overview**

s.21(1)(b)

You will meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016 response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016 in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g. construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

In a March 2016 letter to the Minister of Environmental and Climate Change Canada (ECCC) and copied to DFO, the First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that “no position” be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

The Minister of ECCC met with the Chiefs on March 1, 2016, and as follow up to that meeting, and by way of response to the First Nations’ March 2016 letter, the Minister of ECCC responded on April 4, 2016 to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response.

A response letter was sent on May 20, 2016, from your predecessor indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. Transport Canada staff are attempting to see if their Minister might be available for the June 13 meeting as well because that Department is currently in receipt of an application for a federal permit under the *Navigation Protection Act*.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

In the case of the Prophet River and West Moberly First Nations significant and consistent efforts have been made by DFO to arrange a meeting over the past five months through email, letters, phone calls and opportunistic office visits with very limited return engagement. To date DFO has not had a meeting with the West Moberly and Prophet River First Nations, but DFO staff have been successful at securing a meeting time on June 17, 2016.

Objectives

Your overall objectives for the meeting are: to express the Department’s continued and strong desire to consult with them on the current *Fisheries Act* application; and to communicate the Department’s commitment to a timely review of the current application.

Key Messages

- **I support to the government’s commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and my officials are very interested in obtaining your views on the current *Fisheries Act* application.**
- **Opportunities for providing input have been in place since December. Although timelines are limited, we are still interested in obtaining your technical views on the application before a decision is made.**

s.21(1)(a)

s.21(1)(b)

- **I encourage you to provide views on the current *Fisheries Act* application at the technical meeting with Departmental staff scheduled for June 17, 2016.**
- **Given my Department is committed to ensuring the impacts of the Project to fish and fish habitat are fully considered, we look forward to your views on how impacts can be addressed, for example through the implementation of mitigation, offsetting and monitoring programs.**

2. Request to Stop Processing and Issuance of the Current *Fisheries Act* Application

The Federal Court of Appeal hearing date of September 14, 2016 was announced recently (on June 2, 2016). [REDACTED]

Objectives

[REDACTED]

Key Messages

- **As was noted by my predecessor in his May 20, 2016 letter to you, we intend to continue consideration of the *Fisheries Act* application for authorization that is currently before us as per the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*.**

- [REDACTED]



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**SCENARIO NOTE FOR THE MINISTER: MEETING WITH WEST MOBERLY FIRST NATIONS
CHIEF WILLSON & PROPHET RIVER FIRST NATION CHIEF LYNETTE TSAKOZA
(FOR INFORMATION)**

SUMMARY OF ADVICE TO THE MINISTER

You will speak with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). A scenario note and suggested messages are attached (**Tab 1**).

The Chiefs will likely want to discuss your predecessor's May 20, 2016 response (**Tab 2**) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

The time and date of the call has not yet been finalized.

You will be accompanied by Departmental representatives from Ecosystems and Fisheries Management.

Other relevant correspondence is also provided and includes a March 9, 2016 letter from the West Moberly and Prophet River First Nations (**Tab 3**) and the response provided by the Minister of Environment and Climate Change Canada (**Tab 4**).

Additional background information on the Project is also provided in **Tab 5**.

Catherine Blewett
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachments (5):

TAB 1 - Scenario Note

TAB 2 - Letter from Fisheries and Oceans Canada (DFO) dated May 20, 2016

TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016

TAB 4 - Letter from Environmental and Climate Change Canada dated April 4, 2016

TAB 5 - Background Information on Site C Project

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations

Overview

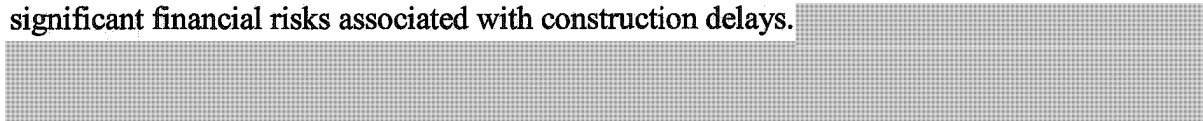
You will speak with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016 response (Tab 2) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016 in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g. construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.



DFO is coordinating Indigenous consultations on the current *Fisheries Act* application to the extent possible with Transport Canada, who are currently in receipt of an application for a federal permit for the Project under the *Navigation Protection Act*. DFO may be in a position to make a decision on the current *Fisheries Act* application before Transport Canada makes their decision. As a result, discussions are likely to be held in coming days within the federal family about whether decisions on the current applications before Transport Canada and DFO can be announced simultaneously.

In a March 2016 letter to the Minister of Environmental and Climate Change Canada (ECCC) and copied to DFO (**Tab 3**), the First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

The Minister of ECCC met with the Chiefs on March 1, 2016, and as follow up to that meeting, and by way of response to the First Nations' March 2016 letter, the Minister of ECCC responded on April 4, 2016 to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response (**Tab 4**).

A response letter was sent on May 20, 2016, from your predecessor (**Tab 2**) indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

In the case of the Prophet River and West Moberly First Nations significant and consistent efforts have been made by DFO to arrange a meeting over the past five months through email, letters, phone calls and opportunistic office visits with very limited return engagement. To date DFO has been successful at securing only one meeting with representatives of the West Moberly and Prophet River First Nations (the Nun wa dee Stewardship Society) on June 17, 2016 to discuss the main civil works application.

A key issue raised at the June 17, 2016 meeting with regional DFO staff was concerning the issuance of a Fisheries Act authorization before a Federal Court of Appeal decision on the appeal. It was communicated that the West Moberly and Prophet River First Nations are of the view that the former Minister's May 20, 2016 letter which states DFO "...will continue consideration of the Fisheries Act authorization application..." suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the Federal Court of Appeal decision.

s.21(1)(a)

s.21(1)(b)



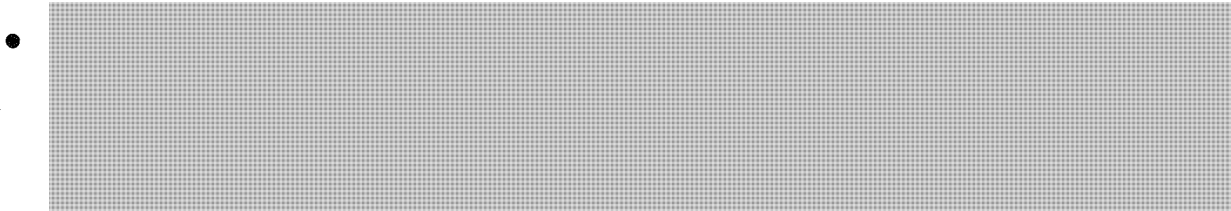
Objectives

Your overall objectives for the meeting are: to have a “with prejudice” conversation, to communicate the Department’s commitment to a thorough and timely review of the current application and to communicate that the appeal hearing date set for September 14, 2016 does not influence DFO’s timing to proceed with making a decision on the current *Fisheries Act* application.

Key Messages

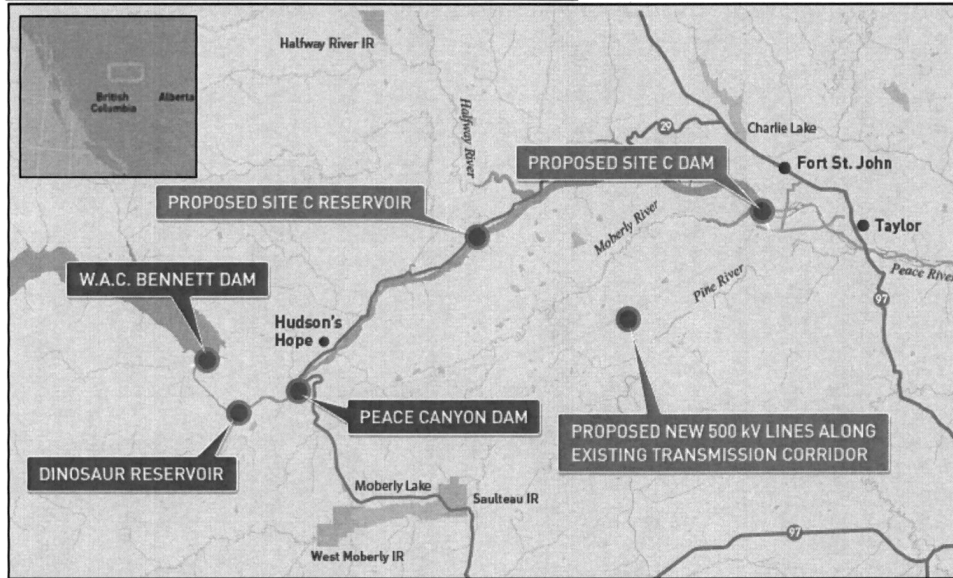
- **I support to the government’s commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and I understand my officials have made significant efforts to provide opportunities for input on the current application since December 2015.**

- **My Department is committed to consulting First Nations on major development Projects, but we are also committed to completing thorough, efficient and timely reviews of applications under the *Fisheries Act*.**
s.21(1)(a)
s.21(1)(b)
- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the Project and that this issue is currently before the Federal Court of Appeal.**



**Pages 282 to / à 290
are duplicates of
sont des duplicatas des
pages 81 to / à 89**

SITE C CLEAN ENERGY PROJECT – BC



Background

British Columbia Hydro and Power Authority (the Proponent) has commenced construction of the Site C Clean Energy Project (the Project) - the third hydroelectric dam in a series of dams on the Peace River in northeast BC. The project is estimated to have a capital cost of \$8.3 billion and create approximately 8,000 person-years of employment. The proponent also contends that the project will provide clean, reliable and affordable electricity for 450,000 homes per year for more than 100 years.

As proposed, the project will be an earth fill dam, approximately 1,050 metres in length, and 60 metres high above Peace River. Reservoir creation will result in 83 kilometres of the Peace River being flooded to two to three times the current width.

A Canada-British Columbia joint review panel (the Panel) concluded that the project would result in significant adverse environmental effects including significant cumulative effects on Aboriginal peoples and Treaty rights, and to fish and fish habitat. Governor in Council (GiC) determined that the environmental effects are justified and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which the proponent must legally comply.

On September 30, 2015, Fisheries and Oceans Canada (DFO) issued a *Fisheries Act* authorization for site preparation works. Potentially affected Aboriginal groups were consulted on the proposed works and offsetting plan. On December 15, 2015, the proponent submitted a second application for Authorization for construction of the main civil works (i.e., the dam, generating station and spillways, and reservoir filling). Operations of the Site C facility are included in the second application, and as a result no further applications for authorizations under the *Fisheries Act* are anticipated. This second application is currently under review by DFO. The 90 day time limit is on hold during indigenous consultation.

DFO has been advised by the proponent that they would like to have the *Fisheries Act* authorization issued in June 2016 to avoid significant financial risks associated with construction delays.

Fisheries Impacts

Impacts on fish and fish habitat in the Peace River are anticipated to result from the construction the main civil works, creation of the project reservoir, and from impaired upstream fish passage due to the dam. Fish entrainment during operation may also result in an ongoing effect on fisheries productivity in the Peace River.

Flooding for reservoir creation will permanently alter existing riverine aquatic ecosystem, resulting in a large oligotrophic reservoir that may reduce abundances of some fish species (e.g., Arctic grayling and mountain whitefish) and increase abundances of other species (e.g., lake whitefish and kokanee). It is uncertain if the proponent's prediction of a significant increase in mountain whitefish abundance and expansion in the range of some salmonid species (e.g., Arctic grayling and bull trout) downstream will occur.

Mitigation & Offsetting

The proponent has proposed standard avoidance and mitigation measures (e.g., fish salvage and isolation, erosion and sediment control, etc.) for construction activities associated with the main civil works.

To offset effects associated with the construction footprint and reservoir filling, the proponent has proposed to conduct: excavation and shoreline contouring to reduce fish stranding and enhance fish habitat; side-channel habitat enhancement downstream of the dam site; reservoir shoreline enhancement to create shallow water littoral habitats; and reservoir shoreline riparian planting. The proponent has also proposed an adaptive management approach as part of its Fisheries and Aquatic Habitat Monitoring and Follow-up Program to support future mitigation and offsetting options after reservoir creation based on follow-up monitoring.

Indigenous Consultation

In August 2015, the Federal Court dismissed an application for judicial review of the decision of the GiC from the Prophet River First Nation and West Moberly First Nation. In September 2015, these groups appealed the Federal Court decision to the Federal Court of Appeal (FCA). A hearing date, not to exceed one day, has been set for September 14, 2016.

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to the Prime Minister and other cabinet ministers (including the Minister of Fisheries, Oceans and the Canadian Coast Guard) requesting a review of the federal decision to approve the project. The Nations have asked the Government to work with them to establish a comprehensive framework for engagement on major development projects.

In a letter dated March 9, 2016, the West Moberly and Prophet River First Nations requested that a Ministerial-level meeting be set-up in Ottawa and that processing and issuance of all federal permit applications for Site C be put on hold until a Federal Court of Appeal decision is made on their legal challenge of the conclusion of the environmental assessment.

A response letter was sent on May 20, 2016, from DFO's minister indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. Transport Canada staff are attempting to see if their Minister might be available for the June 13 meeting as well because that Department is currently in receipt of an application for a federal permit under the *Navigation Protection Act*.

DFO staff continue to attempt to arrange working-level meetings with the West Moberly and Prophet River First Nations on the current *Fisheries Act* application, and after several attempts in recent months DFO staff have been successful at securing a meeting time on June 17, 2016.

Given the complexities of the issues surrounding Indigenous consultation, the timing of a decision of the second *Fisheries Act* application is currently uncertain, but a decision is not likely for several weeks. The Department is working expeditiously but must also take the time necessary to ensure that Indigenous consultations are adequate.

Monitoring & Enforcement

On October 20, 2015, the proponent became aware that the construction of a causeway in the Peace River was being constructed in a different location than authorized by DFO. The proponent ceased further work on the causeway. On December 16, 2015, DFO issued a warning letter to the proponent advising them that the causeway construction works in the Peace River resulted in a failure to comply with the conditions of their authorization. DFO is continuing to monitor this project to ensure compliance with the authorization.

On April 7, 2016, the BC Environmental Assessment Office issued an unrelated Enforcement Order under the BC *Environmental Assessment Act* to BC Hydro for non-compliance with the Environmental Assessment Certificate, requiring immediate measures to control construction runoff and sediment.

Strategic Considerations, Key Issues & Next Steps

The proponent is engaged in ongoing consultation with Indigenous groups related to construction and operation of the Site C dam, and is working with groups to develop impact benefit agreements.

DFO is currently reviewing an application for a *Fisheries Act* Authorization for project components related to construction of the main civil works and for project operations.

DFO is coordinating Indigenous consultations with Transport Canada to ensure a coordinated approach to federal consultations and permitting.



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

SOLICITOR-CLIENT PRIVILEGE / SECRET
2016-009-00627

To: Leslie MacLean
Pour:

Date:

Subject: **SCENARIO NOTE FOR MEETING WITH WEST MOBERLY AND PROPHET
RIVER FIRST NATIONS ON SITE C**

From / De: Nicholas Winfield, A/Director General, EM

Via: Stephen Sharzer, Senior General Counsel, Department of Justice

Kevin Stringer, Senior Assistant Deputy Minister, EFM
Phillipe Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

<input type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input checked="" type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: E.Chernoff (613-993-7361) / T. Gordanier / C. Hilt / N. Winfield / gb



Fisheries and Oceans
Canada

Deputy Minister

Pêches et Océans
Canada

Sous-ministre

SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**MEETING WITH WEST MOBERLY AND PROPHET RIVER FIRST NATIONS
ABOUT SITE C
(FOR INFORMATION)**

SUMMARY

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project") in British Columbia.

The Chiefs will likely want to discuss your predecessor's recent response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project.

The meeting is scheduled for June 13, 2016 from 10:00 to 10:30.

The Honourable Marc Garneau, Minister of Transport may also attend. Philippe Morel, Assistant Deputy Minister, Ecosystems and Fisheries Management and legal counsel will accompany you to this meeting.

Scenario note and suggested messages are attached (**Tab 1**). Relevant correspondence and additional background information on the Project are included in **Tabs 2 -5**.

Leslie MacLean
A/ Deputy Minister

Attachments (5):

1. Scenario Note
2. Letter from West Moberly and Prophet River First Nations dated March 9, 2016
3. Letter from Environmental and Climate Change Canada dated April 4, 2016
4. Letter from DFO dated May 20, 2016
5. Background Information on Site C Project

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations on June 13, 2016

Overview

You will meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's recent response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with *CEAA 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A hearing date for the appeal is not yet scheduled and is expected to be months away.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g. construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

In a March 2016 letter to the Minister of ECC and copied to DFO (**Tab 2**), the First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns. The Minister of ECC responded to this letter on April 4, 2016 (**Tab 3**) to indicate that Canada would be taking a position on the appeal and deferring their other two requests

(requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response.

A response letter (**Tab 4**) was sent on May 20, 2016, from the your predecessor indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. Transport Canada staff are attempting to see if their Minister might be available for the June 13 meeting as well because that Department is currently in receipt of an application for a federal permit under the *Navigation Protection Act*.

DFO staff continue to attempt to arrange working-level meetings with the West Moberly and Prophet River First Nations on the current *Fisheries Act* application, and after several attempts in recent months DFO staff have been successful at securing a meeting time on June 17, 2016.

Objectives

Your overall objectives for the meeting are: to re-iterate that the Department will continue consideration of the current *Fisheries Act* application for the Project; to express the Department's continued and strong desire to consult with them on the current *Fisheries Act* application; and to communicate the Department's commitment to a timely review of the current application.

Key Messages

- **I understand that your organizations allege, amongst other things, that the Federal Court erred in law in dismissing the judicial review of the previous government's decision that the significant adverse effects of the Project are justified in the circumstances.**
- **As this issue is currently before the Federal Court of Appeal, I am willing to listen to your concerns, but I am not in a position to discuss this matter further.**
- **We are committed to the government's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and are very interested in obtaining your organizations' views on the current *Fisheries Act* application.**
- **It is very important that if your organizations plan to provide your views on the current *Fisheries Act* application that we obtain these views in the very near future.**
- **My Department is committed to ensuring the impacts of the Project to fish and fish habitat are fully considered and addressed to the extent possible, through the implementation of mitigation, offsetting and monitoring programs.**

**Pages 298 to / à 301
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**MEETING WITH WEST MOBERLY AND PROPHET RIVER FIRST NATIONS
ABOUT SITE C
(FOR INFORMATION)**

SUMMARY

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project") in British Columbia.

The Chiefs will likely want to discuss your predecessor's recent response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

The meeting is scheduled for June 13, 2016 from 10:00 to 10:30.

The Honourable Marc Garneau, Minister of Transport may also attend. Philippe Morel, Assistant Deputy Minister, Ecosystems and Fisheries Management and legal counsel will accompany you to this meeting.

Scenario note and suggested messages are attached (**Tab 1**). Relevant correspondence is also provided and includes: a March 9, 2016 letter from the West Moberly and Prophet River First Nations (**Tab 2**) and the responses provided by the Minister of Environment and Climate Change Canada (**Tab 3**) and the former Minister of Fisheries, Oceans and the Canadian Coast Guard (**Tab 4**).

Additional background information on the Project is also provided in **Tab5**.

Leslie MacLean
A/ Deputy Minister

Attachments (5):

Scenario Note

Letter from West Moberly and Prophet River First Nations dated March 9, 2016

Letter from Environmental and Climate Change Canada dated April 4, 2016

Letter from DFO dated May 20, 2016

Background Information on Site C Project

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations on June 13, 2016

Overview

You will meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's recent response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with *CEAA 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A hearing date has been set for September 14, 2016 in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g. construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

In a March 2016 letter to the Minister of ECCC and copied to DFO (**Tab 2**), the First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns. The Minister of ECC responded to this letter on April 4, 2016 (**Tab 3**) to indicate that

Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to your predecessor and the other relevant Ministers for response.

A response letter (Tab 4) was sent on May 20, 2016, from the your predecessor indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. Transport Canada staff are attempting to see if their Minister might be available for the June 13 meeting as well because that Department is currently in receipt of an application for a federal permit under the *Navigation Protection Act*.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations along with ten other potentially affected First Nations groups with various levels of engagement. To date DFO has not had a meeting with the West Moberly and Prophet River First Nations.

DFO staff continue to attempt to arrange working-level meetings with the West Moberly and Prophet River First Nations on the current *Fisheries Act* application, and after several attempts in recent months DFO staff have been successful at securing a meeting time on June 17, 2016.

Objectives

Your overall objectives for the meeting are: to re-iterate that the Department will continue consideration of the current *Fisheries Act* application for the Project; to express the Department's continued and strong desire to consult with them on the current *Fisheries Act* application; and to communicate the Department's commitment to a timely review of the current application.

Key Messages

- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the project. However, as this issue is currently before the Federal Court of Appeal, I am willing to listen to your concerns, but I am not in a position to discuss this matter further.**
- **As was noted by my predecessor in his May 20, 2016 letter to you, we intend to continue consideration of the *Fisheries Act* application for authorization that is currently before us as per the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*.**
- **We are committed to the government's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and are very interested in obtaining your views on the current *Fisheries Act* application.**
- **It is very important that if you plan to provide your views on the current *Fisheries Act* application that we obtain these views in the very near future.**

- **My Department is committed to ensuring the impacts of the Project to fish and fish habitat are fully considered and addressed to the extent possible, through the implementation of mitigation, offsetting and monitoring programs.**

**Pages 306 to / à 311
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

2016-045-00494

To: Leslie MacLean
Pour:

Date: April 8, 2016

Subject: **MEMO TO MINISTER APPROVAL OF RESPONSE LETTER ON SITE C**
Objet:

From / De: Christine Loth-Bown, Director General, EM

Via: Stephen Sharzer, Senior General Counsel, Department of Justice

Kevin Stringer, Senior Assistant Deputy Minister, EFM

Philline Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

<input type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input checked="" type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: Eric Chernoff (613-993-7361) / T. Gordanier / N. Winfield / C. Loth-Bown / K. Stringer / gb



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SECRET

2016-045-00494

MEMORANDUM FOR THE MINISTER

**RESPONSE TO WEST MOBERLY AND PROPHET RIVER FIRST NATIONS
REGARDING SITE C
(FOR DECISION AND SIGNATURE)**

SUMMARY OF ADVICE TO MINISTER

The purpose of this memorandum is to provide you with information on recent developments related to the Site C Clean Energy Project, and to seek your signature on. You are being asked to sign the attached letter (Tab 1) concerning responding to concerns raised by some Indigenous groups on the project. Site C Clean Energy Project in British Columbia.

In a letter dated March 9, 2016 (Tab 2), the West Moberly and Prophet River First Nations requested that processing and issuance of all federal permit applications for Site C be put on hold until a Federal Court of Appeal decision is made on their legal challenge of the conclusion of the environmental assessment. They also requested that the Government of Canada take "no position" on their appeal and that a Ministerial-level meeting be set-up in Ottawa arranged to allow them to further discuss their concerns.

The Minister of Environment and Climate Change in a letter dated April 4, 2016 (Tab 3) advised the First Nations that Canada will be taking a position on their appeal. However, the Minister directed the other two requests from the incoming letter (to set up a meeting and to cease processing permit applications) to you and other relevant Ministers for response.

It is recommended that you sign the attached response letter (Tab 1) indicating you are willing to meet and that we will not put on hold processing or potential issuance consideration of the application before the Department for the Site C project will continue. If you sign the letter, it will be sent to the Chiefs of the West Moberly and Prophet River First Nations, as well as federal partners who have an interest in our response to these requests.

BACKGROUND

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act*

.../2

Canada

2012. The Panel concluded that the project would result in significant adverse environmental effects on Indigenous and treaty rights, and to fish and fish habitat, which cannot be mitigated.

s.21(1)(b)

The Governor in Council subsequently determined that environmental effects of the project are justified in the circumstances. In October 2014, the Minister of Environment issued a decision statement with conditions (subsequently re-issued on November 25, 2014) that BC Hydro must legally meet.

On November 5-6, 2014, four Indigenous groups (Doig River, Prophet River, and West Moberly First Nations and McLeod Lake Indian Band) and a landowner association (Peace Valley Landowner Association) filed two applications for judicial review in the Federal Court, seeking judicial review of the GiC's October 14, 2014 Order in Council, concluding that the significant adverse environmental effects that the Project are likely to cause are justified in the circumstances.

In August 2015, the Federal Court dismissed the two applications for judicial review of the decision of the Governor in Council. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nation, appealed that decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

BC Hydro was issued a *Fisheries Act* authorization on September 30, 2015 to conduct the initial site preparation works associated with the project.

A second *Fisheries Act* application was received on December 15, 2015 for the next phase of the project which is construction of the main civil works (i.e., construction of the dam, generating station and spillways, and reservoir filling) and operations.

BC Hydro is requesting that the Department make a decision on the main civil works *Fisheries Act* application in April 2016 to avoid significant financial risks associated with constructing delays. The approximate capital cost of the project is \$8.8 billion.

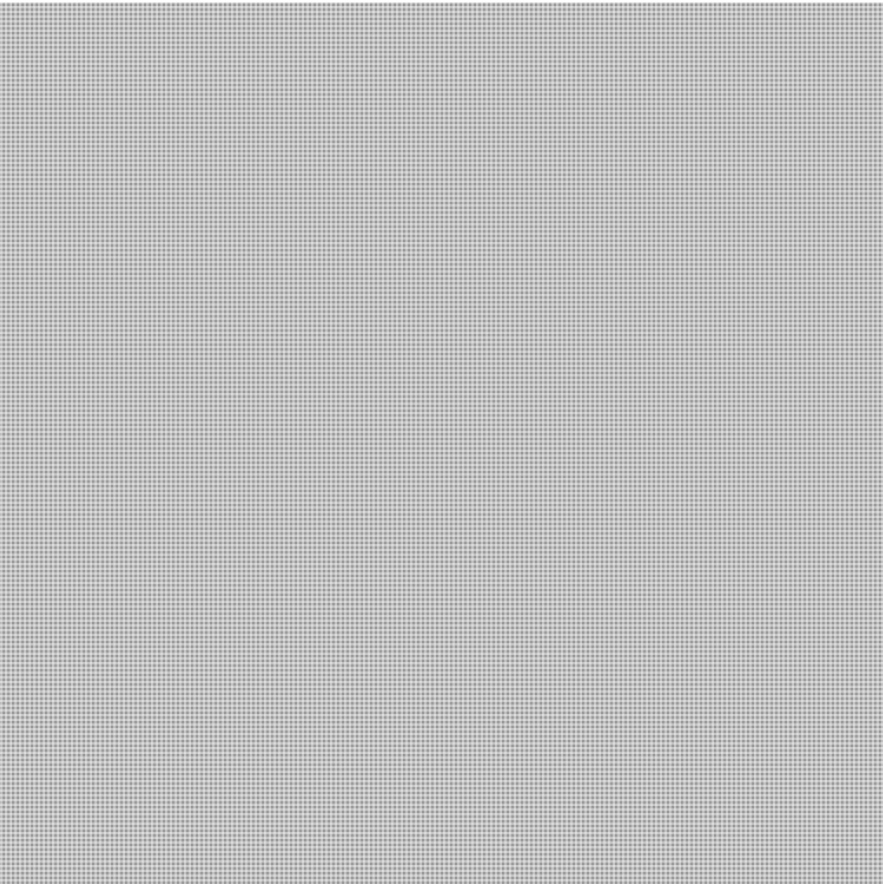
There is considerable opposition to the project from some Indigenous groups. In a letter dated March 9, 2016 (Tab 2), the West Moberly and Prophet River First Nations requested that processing and issuance of all federal permit applications be put on hold until a Federal Court of Appeal decision is made on their legal challenge of the conclusion of the environmental assessment. They also requested that the federal government take "no position" on their appeal and that a Ministerial-level meeting be set up in Ottawa.

In subsequent letters dated March 22 & April 8, 2016, working-level meetings with DFO were requested to discuss their initial concerns with the application for authorization currently before the Department, and requesting an update on the requests made in the March 9 letter.

DFO is coordinating Indigenous consultations with Transport Canada to ensure a coordinated approach to federal consultations and permitting.

The Minister of Environment and Climate Change Canada in a letter dated April 4, 2016 (Tab 3) advised West Moberly and Prophet River First Nations that Canada will be taking a position on their appeal. However, the Minister directed the other two requests (to set up a meeting and to cease processing permit applications) to you and the other relevant Ministers for response.

STRATEGIC CONSIDERATIONS: POLICY DEVELOPMENT



A Federal Court of Appeal decision on the First Nations' legal challenge of the environmental assessment decision is several months away.

2016-045-00494 – Memo to Minister on Site C
E. Chernoff, 613-993-7361, Senior Analyst Major Projects / T. Gordanier / N. Winfield / C. Loth-Brown / K. Stringer / gb

s.21(1)(a)

s.21(1)(b)

s.23

Formatted: Font: Italic

s.21(1)(a)

s.21(1)(b)

s.23

INTRADEPARTMENTAL CONSULTATIONS

Fisheries Protection Program staff in Pacific Region were consulted in the development of this briefing note and proposed response letter (Tab 1).

INTERDEPARTMENTAL CONSULTATIONS

ADVICE AND RECOMMENDATION(S) TO THE MINISTER

It is recommended that you sign the attached letter (Tab 1)

Formatted: Font: Italic

Given the complexities of the issues surrounding First Nations consultations, the timing of a decision of the second *Fisheries Act* application is currently uncertain, but a decision is not likely for several weeks. The Department is working expeditiously but ~~must also~~ will take the time necessary to ensure that Indigenous concerns are considered.

Leslie MacLean
A/ Deputy Minister

- ☐ I concur with the recommendations
- ☐ I do not concur with the recommendations

Hunter Tootoo
Minister

Minister's Comments:

Attachments (3)

Tab 1 – Outgoing letter for Minister's Signature (FOR SIGNATURE)

Tab 2 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016

Tab 3 – Letter from Minister of Environment and Climate Change dated April 4, 2016

SECRET

s.19(1)

Chief Roland Willson
West Moberly First Nations

Chief Lynette Tsakoza
Prophet River First Nation
[REDACTED]

Dear Chiefs Willson and Tsakoza:

Thank you for your correspondence of March 9, 2016, regarding the Site C Clean Energy Project (the project). I am writing in response to that letter, as well as the letter from the Minister of the Environment and Climate Change dated April 4, 2016 about the project.

I wish to inform you that my Department will not put processing and issuance of the *Fisheries Act* application currently before us for the project on hold to await a decision by the Federal Court of Appeal. I am available to meet should you wish to discuss this matter further.

In addition, officials from my Department are available to meet to hear initial concerns with the application currently before the Department for the project as per the requests made in the letters sent on your behalf dated March 22 & April 8, 2016 from the Nun wa dee Stewardship Society. I understand that officials from my Department have already responded to these meeting requests or will be responding in coming days.

Yours sincerely,

The Honourable Hunter Tootoo, P.C., M.P.
Minister of Fisheries and Oceans

c.c.: The Right Honourable Justin Trudeau, P.C., M.P.
The Honourable Catherine McKenna, P.C., M.P.
The Honourable Jody Wilson-Raybould, P.C., M.P.
The Honourable Carolyn Bennett, P.C., M.P.
The Honourable Marc Garneau, P.C., M.P.

SECRET

s.19(1)

Chief Roland Willson
West Moberly First Nations

Chief Lynette Tsakoza
Prophet River First Nation
[REDACTED]

Dear Chiefs Willson and Tsakoza:

Thank you for your correspondence of March 9, 2016, regarding the Site C Clean Energy Project (the project). I am writing in response to that letter, as well as the letter you received from the Minister of the Environment and Climate Change dated April 4, 2016 related to the same matters.

I wish to inform you that my Department will continue consideration of the *Fisheries Act* authorization application submitted by the proponent as per the requirements of the *Applications for Authorization under Paragraph 35(2)(b) Fisheries Act Regulations*.

In response to your request for a meeting with me, I am open to such a meeting and would welcome the opportunity to further discuss your concerns related to this project.

In addition, officials from my Department continue to be available to meet to hear your concerns with the application currently before the Department for the project as per the request made in the letter sent on your behalf dated March 22, 2016 from the Nun wa dee Stewardship Society.

Yours sincerely,

The Honourable Hunter Tootoo, P.C., M.P.
Minister of Fisheries and Oceans

c.c.: The Right Honourable Justin Trudeau, P.C., M.P.
The Honourable Catherine McKenna, P.C., M.P.
The Honourable Jody Wilson-Raybould, P.C., M.P.

The Honourable Carolyn Bennett, P.C., M.P.
The Honourable Marc Garneau, P.C., M.P.
The Honourable James Gordon Carr, P.C., M.P.

DRAFT



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CONFIDENTIAL
MECTS # 2015-505-00097
EKME # 3562135

To: Matthew King
Pour:

Date:

SUBJECT: **CURRENT STATUS FOR SITE C**
CLEAN ENERGY HYDROELECTRIC PROJECT, BC

Objet:

From / De: Rebecca Reid, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister, EFM

Philippe Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

Christine Loth-Bown, Director General, EM

<input checked="" type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program
(604) 666-3909 / C. Webb, Regional Director, Ecosystems Management Branch / st



CONFIDENTIAL

2015-505-00097
EKME 3566301

MEMORANDUM FOR THE MINISTER

**CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

The purpose of this memorandum is to provide you an update on the Site C Clean Energy Project, a third hydroelectric dam on the Peace River in northeast British Columbia.

A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act 2012*. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights, and to fish and fish habitat, which cannot be mitigated. The Governor in Council (GiC) subsequently determined that environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a decision statement with conditions that BC Hydro must legally meet.

In August 2015, the Federal Court dismissed two applications made by indigenous groups for judicial review of the decision of the GiC. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nation, appealed that decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

Regulatory approvals for the project are required from DFO, as well as Transport Canada. On September 30, 2015, DFO issued an authorization under paragraph 35(2)(b) of the *Fisheries Act* for serious harm to fish resulting from preliminary construction activities associated with site preparation works. In October 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. After investigation, DFO issued a Warning Letter to BC Hydro on December 16, 2015. DFO continues to monitor the site preparation works for compliance with the *Fisheries Act* authorization and no further compliance issues have been found to date.

In December 2015, BC Hydro submitted a second application to DFO for the next phase of the project which is construction of the main civil works (e.g. construction of the dam and reservoir filling. BC Hydro is requesting that the Department make a decision on the second application prior to their scheduled construction start date of April 1, 2016.

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

.../2

CONFIDENTIAL

BACKGROUND

BC Hydro is constructing the Site C Clean Energy Project, a hydroelectric dam on the Peace River in northeast British Columbia, near Fort St. John. This will be the third major dam on the Peace River and will result in the creation of an 83 km reservoir.

A Canada-British Columbia joint review panel (the Panel) conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act* 2012 for the proposed Site C Clean Energy Project. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights and to fish and fish habitat which cannot be mitigated. The Governor in Council (GiC) subsequently determined through an Order in Council that environmental effects of the Site C project are justified in the circumstances and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which BC Hydro must legally comply.

Fisheries Act Authorization Issues:

On September 30, 2015, the Department issued an authorization under paragraph 35(2)(b) of the *Fisheries Act* for site preparatory construction activities related to the Project. On December 15, 2015, the Department received an Application for Authorization for the main civil works for the Project (i.e., construction of the dam, generating station and spillways, and reservoir filling).

On October 20, 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. Under its own initiative, BC Hydro ceased further work on the causeway. Consistent with the interim Fisheries Protection Compliance Protocol between the Fisheries Protection Program and Conservation and Protection Program, the Department conducted a site visit and assessment of the site.

On December 16, 2015, the Department issued a Warning Letter to BC Hydro advising them that the causeway construction works in the Peace River resulted in an offence under the *Fisheries Act* because they did not comply with the conditions of the authorization issued to them for the site preparation works. BC Hydro has responded to this issue and the Department is continuing to monitor this Project to ensure compliance with the authorization. To date, no further compliance issues have been identified.

Indigenous Issues:

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to you, the Prime Minister, and other cabinet ministers requesting a review of the federal decision to approve the Project. They also asked the Government to work with First Nations to establish a comprehensive framework for engagement on major development projects.

At the recent Assembly of First Nation's Chiefs (December 8-11, 2015), a resolution was

.../3

CONFIDENTIAL

passed which called for all federal regulatory permits to be put on hold and for a review of the Governor in Council decision on this Project.

STRATEGIC CONSIDERATIONS: PROGRAM POLICY DEVELOPMENT

On November 5-6, 2014, four Indigenous groups (Doig River, Prophet River, and West Moberly First Nations and McLeod Lake Indian Band) and a landowner association (Peace Valley Landowner Association) filed two applications for judicial review in the Federal Court, seeking judicial review of the GiC's October 14, 2014 Order in Council, concluding that the significant adverse environmental effects that the Project are likely to cause are justified in the circumstances.

In August 2015, the Federal Court dismissed the two applications for judicial review of the decision of the GiC. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nation, appealed that decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

Protests of the project have been ongoing with demonstrators occupying an area near the project site since late December 2015. Beginning on February 22, 2016, BC Hydro was before the Supreme Court of British Columbia to seek an injunction against the protests such that work could continue unimpeded.

There has been and continues to be significant recent local media attention related to this Project.

INTRADEPARTMENTAL CONSULTATIONS

No other sectors were consulted in the development of this memorandum.

INTERDEPARTMENTAL CONSULTATIONS

The Department has been coordinating with other federal departments (Transport Canada, Canadian Environmental Assessment Agency and Major Projects Management Office) on litigation issues, and regulatory permitting consultations and issuance.

ADVICE AND RECOMMENDATIONS TO MINISTER

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the Project, and will provide regular briefings on key activities associated with the review as they occur.

Matthew King
Deputy Minister

Leslie MacLean
Associate Deputy Minister



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CONFIDENTIAL
MECTS # 2015-505-00097
EKME # 3558065

To: Matthew King
Pour:

Date:

Object:
Objet:

CURRENT STATUS FOR SITE C
CLEAN ENERGY HYDROELECTRIC PROJECT, BC

From / De: Rebecca Reid, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister

Additional approvals:
Autre(s) approbation(s):

☐

Your Signature
Votre signature

☐

Information

☐

For Comments
Observations

☒

Material for the Minister
Documents pour le Ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: Brad Fanos, Regulatory Reviews Manager, Fisheries Protection
Program (604) 666-3909 / C. Webb, Regional Director,
Ecosystems Management Branch / st

CONFIDENTIAL

2015-505-00097
EKME # 3558065

MEMORANDUM FOR THE MINISTER

**CURRENT STATUS FOR SITE C
CLEAN ENERGY HYDROELECTRIC PROJECT, BC
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

BC Hydro is constructing the Site C Clean Energy Project (the Project), a hydroelectric dam on the Peace River in northeast British Columbia, near Fort St. John. This will be the third major dam on the Peace River and will result in the creation of a reservoir approximately 83 kms long and will be, on average, two to three times the width of the current river.

Federal and provincial environmental assessment decisions were announced in October 2014. The federal Minister of Environment made an environmental assessment decision concluding that the Project would result in significant adverse environmental effects, but that, following a Governor in Council determination, the significant environmental effects of the Project were justified in the circumstances.

In order to proceed with the Project, federal regulatory approvals are required from Fisheries, Oceans and the Canadian Coast Guard (the Department) as well as Transport Canada. On Sep 30, 2015, the Department issued a paragraph 35(2)(b) authorization under the *Fisheries Act* for the site preparatory construction activities related to the Project.

The Project has been subject to multiple rounds of litigation by Indigenous groups and by landowners opposed to the Project. On November 25, 2015, the West Moberly First Nations and Prophet River First Nation wrote to the Prime Minister, yourself, and nine other Cabinet ministers requesting a review of the previous government's environmental assessment decision. The Privy Council Office is working with departments, including Natural Resources Canada, to coordinate a response.

On December 10, 2015, the Assembly of First Nation's Chiefs passed a resolution calling for all federal regulatory permits to be put on hold and for a review of the Government's environmental assessment decision on the project.

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

BACKGROUND

A Canada-British Columbia joint review panel (the Panel) conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act* 2012 for the proposed Site C Clean Energy Project. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights and to fish and fish habitat which cannot be mitigated.

The Governor in Council subsequently determined that environmental effects of the Site C project are justified in the circumstances and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which BC Hydro must legally comply.

Fisheries Act Authorization Issues:

On September 30, 2015, the Department issued an authorization under paragraph 35(2)(b) of the *Fisheries Act* for site preparatory construction activities related to the Project. On December 15, 2015, the Department received an Application for Authorization for the main civil works for the Project.

On October 20, 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. Under its own initiative, BC Hydro ceased further work on the causeway. Consistent with the interim Fisheries Protection Compliance Protocol between the Fisheries Protection Program and Conservation and Protection Program, a site visit and assessment of the site was conducted.

On December 16, 2015, the department issued a Warning Letter to BC Hydro advising them that the causeway construction works in the Peace River resulted in an offence under the *Fisheries Act* because they did not comply with the conditions of the authorization issued to them for the site preparation works. BC Hydro has responded to this issue and the department is continuing to monitor this Project to ensure compliance with the authorization.

Indigenous Issues:

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to you, the Prime Minister, and other cabinet ministers requesting a review of the federal decision to approve the Project. They also asked the Government to work with First Nations to establish a comprehensive framework for engagement on major development projects.

At the recent Assembly of First Nation's Chiefs (December 8-11, 2015), a resolution was passed which called for all federal Site C permits to be put on hold and for a review of the Governor in Council decision on this Project.

STRATEGIC CONSIDERATIONS: POLICY DEVELOPMENT

On November 5-6, 2014, four Indigenous groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations and McLeod Lake Indian Band) and a landowner association (Peace Valley Landowner Association) filed two applications for judicial review in

the Federal Court, seeking judicial review of the Governor in Council's October 14, 2014 Order in Council, concluding that the significant adverse environmental effects that the Project are likely to cause are justified in the circumstances.

In August 2015, the Federal Court dismissed the two applications for judicial review of the decision of the Governor in Council. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nations, appealed the Federal Court decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

There has been significant recent local media attention related to this project.

INTRADEPARTMENTAL CONSULTATIONS

No other departments/agencies were consulted in the development of this briefing note.

INTERDEPARTMENTAL CONSULTATIONS

The Department has been coordinating with other federal departments (Transport Canada, Canadian Environmental Assessment Agency and Major Projects Management Office) on litigation issues, and regulatory permitting consultations and issuance.

ADVICE AND RECOMMENDATIONS TO MINISTER

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

Matthew King
Deputy Minister

Leslie MacLean
Associate Deputy Minister



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Ecosystems & Fisheries Management
Assistant Deputy Minister

Gestion des écosystèmes et des pêches
Sous-ministre adjoint

CONFIDENTIAL

2015-505-00097
EKME 3566301

MEMORANDUM FOR THE MINISTER

**CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT, BC
(FOR INFORMATION)**

SUMMARY OF ADVICE TO MINISTER

The purpose of this memorandum is to provide you an BC Hydro is constructing update on the Site C Clean Energy Project, a third hydroelectric dam on the Peace River in northeast British Columbia. Fisheries and Oceans Canada (the Department) is currently reviewing the second application required for the project under the Fisheries Act that would authorize serious harm to fish, a hydroelectric dam on the Peace River in northeast British Columbia, near Port St. John. This will be the third major dam on the Peace River and will result in the creation of an 83-km reservoir.

Formatted: Font: Italic

A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act 2012*. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights, and to fish and fish habitat, which cannot be mitigated. The Governor in Council subsequently determined that environmental effects of the Project are justified in the circumstances. In October 2014, the Minister of Environment issued a decision statement with conditions that BC Hydro must legally meet.

Regulatory approvals are required from Fisheries, Oceans and the Canadian Coast Guard the Department, as well as Transport Canada. On September 30, 2015, the Department issued a section 35(2)(b) authorization under the *Fisheries Act* for serious harm to fish resulting from preliminary construction activities associated with preparing the dam site the site preparatory construction activities. In December On December 15, 2015, BC Hydro submitted a second application to the Department for the next phase of the project which is for a section 35(2)(b) authorization for the construction of the main components of the dam-main civil works. BC Hydro is requesting that the Department make a decision on the second application issue a *Fisheries Act* S.35(2)(b) authorization prior to the current scheduled construction start date of April 1, 2016.

The Project has been subject to multiple rounds of litigation by Indigenous groups and by landowners. On November 25, 2015, the West Moberly First Nation and Prophet River First Nation wrote to the Prime Minister, yourself, and nine other Cabinet ministers requesting a

.../2

Canada

- 2 -

CONFIDENTIAL

review of the previous government's environmental assessment decision. On December 10, 2015, the Assembly of First Nations Chiefs passed a resolution calling for all federal regulatory permits to be put on hold and for a review of the Governor in Council decision.

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the project, and will provide regular briefings on key activities associated with the review as they occur.

BACKGROUND

BC Hydro is constructing the Site C Clean Energy Project, a hydroelectric dam on the Peace River in northeast British Columbia, near Fort St. John. This will be the third major dam on the Peace River and will result in the creation of an 83 km reservoir.

A Canada-British Columbia joint review panel (the Panel) conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act 2012* for the proposed Site C Clean Energy Project. The Panel concluded that the Project would result in significant adverse environmental effects on Aboriginal and Treaty rights and to fish and fish habitat which cannot be mitigated. The Governor in Council (GiC) subsequently determined through an Order in Council that environmental effects of the Site C project are justified in the circumstances and an environmental assessment decision statement was issued on October 14, 2014 (and re-issued on November 25, 2014) by the Minister of Environment. The decision statement includes conditions with which BC Hydro must legally comply.

Fisheries Act Authorization Issues:

On September 30, 2015, the Department issued an authorization under paragraph 35(2)(b) of the *Fisheries Act* for site preparatory construction activities related to the Project. On December 15, 2015, the Department received an Application for Authorization for the main civil works for the Project (i.e., construction of the dam, generating station and spillways, and reservoir filling).

On October 20, 2015, BC Hydro became aware that the construction of a causeway in the Peace River was being constructed in a different location than that authorized by the Department. Under its own initiative, BC Hydro ceased further work on the causeway. Consistent with the interim Fisheries Protection Compliance Protocol between the Fisheries Protection Program and Conservation and Protection Program, the Department conducted a site visit and assessment of the site.

On December 16, 2015, the Department issued a Warning Letter to BC Hydro advising them that the causeway construction works in the Peace River resulted in an offence under

.../3

2015-505-00097 – CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT, BCM.
Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program (604) 666-3909 / C. Webb, Regional Director, Ecosystems
Management Branch / st

- 3 -

CONFIDENTIAL

the *Fisheries Act* because they did not comply with the conditions of the authorization issued to them for the site preparation works. BC Hydro has responded to this issue and the Department is continuing to monitor this Project to ensure compliance with the authorization.

Indigenous Issues:

On November 25, 2015, the Prophet River First Nation and the West Moberly First Nation wrote to you, the Prime Minister, and other cabinet ministers requesting a review of the federal decision to approve the Project. They also asked the Government to work with First Nations to establish a comprehensive framework for engagement on major development projects.

At the recent Assembly of First Nation's Chiefs (December 8-11, 2015), a resolution was passed which called for all federal regulatory permits to be put on hold and for a review of the Governor in Council decision on this Project.

STRATEGIC CONSIDERATIONS: PROGRAM POLICY DEVELOPMENT

On November 5-6, 2014, four Indigenous groups (Doig River, Prophet River, and West Moberly First Nations and McLeod Lake Indian Band) and a landowner association (Peace Valley Landowner Association) filed two applications for judicial review in the Federal Court, seeking judicial review of the GiC's October 14, 2014 Order in Council, concluding that the significant adverse environmental effects that the Project are likely to cause are justified in the circumstances.

In August 2015, the Federal Court dismissed the two applications for judicial review of the decision of the GiC. In September 2015 two of the applicants, the Prophet River First Nation and the West Moberly First Nation, appealed that decision to the Federal Court of Appeal. A hearing date for that appeal has not been scheduled.

There has been and continues to be significant recent local media attention related to this Project.

INTRADEPARTMENTAL CONSULTATIONS

No other sectors were consulted in the development of this memorandum.

INTERDEPARTMENTAL CONSULTATIONS

The Department has been coordinating with other federal departments (Transport Canada, Canadian Environmental Assessment Agency and Major Projects Management Office) on litigation issues, and regulatory permitting consultations and issuance.

ADVICE AND RECOMMENDATIONS TO MINISTER

2015-505-00097 – CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT, BCM.
Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program (604) 666-3909 / C. Webb, Regional Director, Ecosystems Management Branch / st

.../4

- 4 -

CONFIDENTIAL

The Department will continue to coordinate with other federal departments and consult with Indigenous groups in relation to the ongoing regulatory review of the Project, and will provide regular briefings on key activities associated with the review as they occur.

Matthew King
Deputy Minister

Leslie MacLean
Associate Deputy Minister

2015-505-00097 – CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT, BCM.
Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program (604) 666-3909 / C. Webb, Regional Director, Ecosystems
Management Branch / st

000333



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

CONFIDENTIAL

MECTS # 2015-505-00097

EKME # 3562135

To: Matthew King
Pour:

Date:

SUBJECT: **CURRENT STATUS FOR SITE C**
CLEAN ENERGY HYDROELECTRIC PROJECT, BC

Objet:

From / De: Rebecca Reid, Regional Director General, Pacific Region

Via: Kevin Stringer, Senior Assistant Deputy Minister, EFM

Philippe Morel, Assistant Deputy Minister, EFM Operations

Additional approval(s) /
Autre(s) approbation(s):

Christine Loth-Bown, Director General, EM

<input checked="checked" type="checkbox"/>	Your Signature Votre signature	<input type="checkbox"/>	Information
<input type="checkbox"/>	For Comments Observations	<input type="checkbox"/>	Material for the Minister Documents pour le ministre

Remarks:
Remarques:

DISTRIBUTION

Drafting Officer/ Rédacteur: Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program
(604) 666-3909 / C. Webb, Regional Director, Ecosystems Management Branch / st

- 6 -

CONFIDENTIAL

No information has been removed or severed from this page

2015-505-00097 – CURRENT STATUS FOR SITE C CLEAN ENERGY HYDROELECTRIC PROJECT, BCM.
Brad Fanos, Regulatory Reviews Manager, Fisheries Protection Program (604) 666-3909 / C. Webb, Regional Director, Ecosystems
Management Branch / st

.../7



Fisheries and Oceans
Canada
Deputy Minister

Pêches et Océans
Canada
Sous-ministre

SOLICITOR-CLIENT PRIVILEGE / SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**SCENARIO NOTE FOR THE MINISTER: MEETING WITH WEST MOBERLY FIRST
NATIONS CHIEF WILLSON & PROPHET RIVER FIRST NATION CHIEF LYNETTE
TSAKOZA, ON JUNE 13
(FOR INFORMATION)**

SUMMARY

You will ~~meet~~ speak with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). Scenario note and suggested messages are attached (Tab 1).

The Chiefs will likely want to discuss your predecessor's May 20, 2016 response (Tab 2) to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

The time and date of the meeting is scheduled for June 13, 2016 has not yet been finalized.

The Honourable Marc Garneau, Minister of Transport may also attend. You will be accompanied by Departmental representatives from Ecosystems and Fisheries Management.

Other relevant correspondence is also provided and includes: a March 9, 2016 letter from the West Moberly and Prophet River First Nations (Tab 3) and the response provided by the Minister of Environment and Climate Change Canada (Tab 4).

Additional background information on the Project is also provided in Tab 5.

Leslie MacLean
A/Deputy Minister

Attachments (5):

TAB 1 - Scenario Note

TAB 2 - Letter from Fisheries and Oceans Canada (DFO) dated May 20, 2016

TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016

TAB 4 - Letter from Environmental and Climate Change Canada dated April 4, 2016

TAB 5 - Background Information on Site C Project

2015-009-00627- Scenario Note for the Minister: Meeting with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza, on June 13 - E. Chernoff (613-993-7361) / C. Crance / C. Hilt / N. Winfield / P. Morel / K. Stringer / S. Sharzer / gb

SCENARIO NOTE

Meeting with West Moberly and Prophet River First Nations on June 13, 2016

Overview

You will ~~meet~~ speak with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016 response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

s.21(1)(a)
s.21(1)(b)

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016 in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g. construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.

In a March 2016 letter to the Minister of Environmental and Climate Change Canada (ECCC) and copied to DFO, the First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

The Minister of ECCC met with the Chiefs on March 1, 2016, and as follow up to that meeting, and by way of response to the First Nations' March 2016 letter, the Minister of ECCC responded on April 4, 2016 to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response.

A response letter was sent on May 20, 2016, from your predecessor indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. Transport Canada staff are attempting to see if their Minister might be available for the June 13 meeting as well because that Department is currently in receipt of an application for a federal permit under the *Navigation Protection Act*.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

In the case of the Prophet River and West Moberly First Nations significant and consistent efforts have been made by DFO to arrange a meeting over the past five months through email, letters, phone calls and opportunistic office visits with very limited return engagement. To date DFO has not had a meeting with the West Moberly and Prophet River First Nations, but DFO staff have been successful at securing a meeting time on June 17, 2016. To date DFO has been successful at securing only one meeting with representatives of the West Moberly and Prophet River First Nations (the Nun wa dee Stewardship Society) on June 17, 2016 to discuss the main civil works application.

Objectives

Your overall objectives for the meeting are: to express the Department's continued and strong desire to consult with them on the current *Fisheries Act* application; and to communicate the Department's commitment to a timely review of the current application.

Key Messages

- ~~I support to the government's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and my officials are very interested in obtaining your views on the current *Fisheries Act* application.~~

- ~~Opportunities for providing input have been in place since December. Although timelines are limited, we are still interested in obtaining your technical views on the application before a decision is made.~~
- ~~I encourage you to provide views on the current *Fisheries Act* application at the technical meeting with Departmental staff scheduled for June 17, 2016.~~
- ~~Given my Department is committed to ensuring the impacts of the Project to fish and fish habitat are fully considered, we look forward to your views on how impacts can be addressed, for example through the implementation of mitigation, offsetting and monitoring programs.~~

2. Request to Stop Processing and Issuance of the Current *Fisheries Act* Application

The Federal Court of Appeal hearing date of September 14, 2016 was announced recently (on June 2, 2016).

A key issue raised at the June 17, 2016 meeting with regional DFO staff was concerning the issuance of a *Fisheries Act* authorization before a Federal Court of Appeal decision on the appeal. It was communicated that the West Moberly and Prophet River First Nations are of the view that the former Minister's May 20, 2016 letter which states DFO "...will continue consideration of the *Fisheries Act* authorization application..." suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the Federal Court of Appeal decision.

s.21(1)(a)

s.21(1)(b)

Commented [dfo1]: /

Formatted: Font: Italic

Formatted: Font: Italic

s.21(1)(a)

s.21(1)(b)



Formatted: None, Don't keep with next

Formatted: English (Canada)

Formatted: None, Don't keep with next

Objectives

Your overall objectives for the meeting are: to communicate the Department's commitment to a thorough and timely review of the current application and ~~if pressed on this issue your objective will be to reiterate that the Department will continue consideration of the current Fisheries Act application for the Project and communicate that this issue is currently before the Federal Court of Appeal and that you are not in a position to discuss this matter further.~~ ~~communicate that the appeal hearing date set for September 14, 2016 does not influence DFO's timing to plans to proceed with making a decision on the current Fisheries Act application before the appeal is heard on September 14, 2016.~~

Commented [D2]:

Or communicate that DFO is prepared to proceed with making a decision on the current Fisheries Act application. appeal hearing date set for September 14, 2016

Key Messages

- ~~As was noted by my predecessor in his May 20, 2016 letter to you, we intend to continue consideration of the Fisheries Act application for authorization that is currently before us as per the Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations.~~
- I support to the government's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and I understand my officials have made significant efforts to provide opportunities for input on the current application since December.
- My Department is committed to consulting First Nations on major development projects, but we are also committed to completing thorough, efficient and timely reviews of applications under the Fisheries Act.
- I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the Project and that. ~~However, as this issue is currently before the Federal Court of Appeal.~~

Formatted: Font: 12 pt, Not Bold

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Font: 12 pt, Not Bold

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Font: Italic

Formatted: Font: 12 pt, Not Bold

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [dfo3]: previously this said as this is before FCA, I am not in a position to discuss this matter further.

Formatted: Font: 12 pt, Not Bold

Formatted: List Paragraph, No bullets or numbering

- **I am willing to listen to your concerns, but I plan to proceed with our review which could possibly include making a decision on the current Fisheries Act application before the appeal is heard on September 14, 2016 in the Federal Court of Appeal.**
- **am not in a position to discuss this matter further.**

Commented [dfo4]: added "our review which could possibly include" to captures Brad's point raised earlier in paragraph starting with "As a result, the two Chiefs."

Formatted: Font: Italic



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SOLICITOR-CLIENT PRIVILEGE / SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**MEETING WITH WEST MOBERLY AND PROPHET RIVER FIRST NATIONS
ABOUT SITE C
(FOR INFORMATION)**

SUMMARY

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). Scenario note and suggested messages are attached (**Tab 1**).

The Chiefs will likely want to discuss your predecessor's May 20, 2016 response (**Tab 2**) to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

The meeting is scheduled for June 13, 2016.

The Honourable Marc Garneau, Minister of Transport may also attend. You will be accompanied by Departmental representatives from Ecosystems and Fisheries Management.

Other relevant correspondence is also provided and includes: a March 9, 2016 letter from the West Moberly and Prophet River First Nations (**Tab 3**) and the response provided by the Minister of Environment and Climate Change Canada (**Tab 4**).

Additional background information on the Project is also provided in **Tab 5**.

Leslie MacLean
A/ Deputy Minister

Attachments (5):

TAB 1 - Scenario Note

TAB 2 - Letter from Fisheries and Oceans Canada (DFO) dated May 20, 2016

TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016

TAB 4 - Letter from Environmental and Climate Change Canada dated April 4, 2016

TAB 5 - Background Information on Site C Project

SCENARIO NOTE

s.21(1)(a) **Meeting with West Moberly and Prophet River First Nations on June 13, 2016**

s.21(1)(b)

Overview

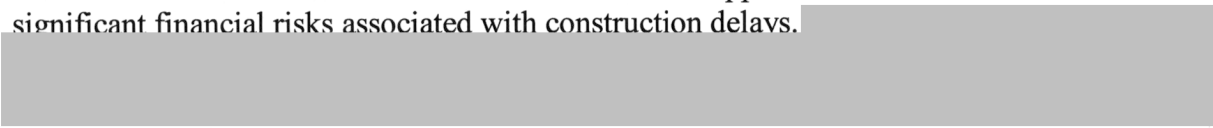
You will meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016 response to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision, alleging, among other things, that the information before the GiC could not support a finding of justification, and the GiC in determining whether the Project was justified ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016 in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g. construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application in June 2016 to avoid significant financial risks associated with construction delays.



In a March 2016 letter to the Minister of Environmental and Climate Change Canada (ECCC) and copied to DFO, the First Nations requested that processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that “no position” be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

The Minister of ECC met with the Chiefs on March 1, 2016, and as follow up to that meeting, and by way of response to the First Nations’ March 2016 letter, the Minister of ECCC responded on April 4, 2016 to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response.

A response letter was sent on May 20, 2016, from your predecessor indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. Transport Canada staff are attempting to see if their Minister might be available for the June 13 meeting as well because that Department is currently in receipt of an application for a federal permit under the *Navigation Protection Act*.

From December 22, 2015 to present, DFO has conducted First Nation consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement. In the case of the Prophet River and West Moberly First Nations significant and consistent efforts have been made over the past five months through email, letters, phone calls and opportunistic office visits. To date DFO has not had a meeting with the West Moberly and Prophet River First Nations despite extensive efforts by DFO staff.

DFO staff continue to attempt to arrange working-level meetings with the West Moberly and Prophet River First Nations on the current *Fisheries Act* application, and after several attempts in recent months DFO staff have been successful at securing a meeting time on June 17, 2016.

Objectives

Your overall objectives for the meeting are: to express the Department’s continued and strong desire to consult with them on the current *Fisheries Act* application; and to communicate the Department’s commitment to a timely review of the current application.

Key Messages

- **We are committed to the government’s commitment to a renewed, nation-to-nation relationship with Indigenous Peoples and are very interested in obtaining your views on the current *Fisheries Act* application.**
- **I encourage you to provide views on the current *Fisheries Act* application at the technical meeting with Departmental staff scheduled for June 17,**

s.21(1)(a)

s.21(1)(b)

2016 as we are interested in obtaining your technical views on the application in their entirety in coming weeks.

- **Given my Department is committed to ensuring the impacts of the Project to fish and fish habitat are fully considered, we look forward to your views on how impacts can be addressed, for example through the implementation of mitigation, offsetting and monitoring programs.**

2. Request to Stop Processing and Issuance of the Current *Fisheries Act* Application

The Federal Court of Appeal hearing date of September 14, 2016 was announced recently (on June 2, 2016). [REDACTED]

Objectives

If pressed on this issue your objective will be to reiterate that the Department will continue consideration of the current *Fisheries Act* application for the Project and communicate that this issue is currently before the Federal Court of Appeal and that you are not in a position to discuss this matter further.

Key Messages

- **As was noted by my predecessor in his May 20, 2016 letter to you, we intend to continue consideration of the *Fisheries Act* application for authorization that is currently before us as per the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*.**
- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the Project. However, as this issue is currently before the Federal Court of Appeal, I am willing to listen to your concerns, but I am not in a position to discuss this matter further.**

**Pages 346 to / à 359
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

SOLICITOR-CLIENT PRIVILEGE / SECRET

2016-009-00627

MEMORANDUM FOR THE MINISTER

**MEETING WITH WEST MOBERLY AND PROPHET RIVER FIRST NATIONS
ABOUT SITE C
(FOR INFORMATION)**

SUMMARY

You will meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). Scenario note and suggested messages are attached (Tab 1).

The Chiefs will likely want to discuss your predecessor's May 20, 2016 response (Tab 2) to their request to cease processing and issuance of the current *Fisheries Act* application for the Project, as well as their overall concerns with the project.

The meeting is scheduled for June 13, 2016.

The Honourable Marc Garneau, Minister of Transport may also attend. You will be accompanied by Departmental representatives from Ecosystems and Fisheries Management.

Other relevant correspondence is also provided and includes: a March 9, 2016 letter from the West Moberly and Prophet River First Nations (Tab 3) and the response provided by the Minister of Environment and Climate Change Canada (Tab 4).

Additional background information on the Project is also provided in Tab 5.

Leslie MacLean
A/ Deputy Minister

Attachments (5):

- TAB 1 - Scenario Note
- TAB 2 - Letter from Fisheries and Oceans Canada (DFO) dated May 20, 2016
- TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016
- TAB 4 - Letter from Environmental and Climate Change Canada dated April 4, 2016
- TAB 5 - Background Information on Site C Project



Fisheries and Oceans
Canada

Deputy Minister

Pêches et Océans
Canada

Sous-ministre

Solicitor-Client and Litigation Privilege

2016-009-00627

MEMORANDUM FOR THE MINISTER

**SCENARIO NOTE FOR THE MINISTER: MEETING WITH
WEST MOBERLY FIRST NATIONS CHIEF WILLSON & PROPHET RIVER
FIRST NATION CHIEF LYNETTE TSAKOZA
(FOR INFORMATION)**

Formatted: Font: 8 pt

SUMMARY OF ADVICE TO THE MINISTER

You will ~~spea~~meet with West Moberly First Nations Chief Roland Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project (the "Project"). A scenario note and suggested messages are attached (Tab 1).

The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (Tab 2) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

This conversation is another attempt to fulfill the Government of Canada's duty to consult with First Nations in order to complete our review for a *Fisheries Act* authorization request made by BC Hydro.

The time and date of the ~~call~~meeting has not yet been finalized.

Departmental representatives from Ecosystems and Fisheries Management are available to support you.

Other relevant correspondence is also provided and includes a March 9, 2016 letter from the West Moberly and Prophet River First Nations (Tab 3), and the response provided by the Minister of Environment and Climate Change (Tab 4), a letter from Transport Canada (Tab 5) and a recent letter from Fisheries and Oceans Canada (Tab 6).

Formatted: Font: Bold

Formatted: Font: Bold

Additional background information on the Project is also provided in Tab 75.

Catherine Blewett
Deputy Minister

Kevin Stringer
Associate Deputy Minister

Attachments (75):

- TAB 1 - Scenario Note
- TAB 2 - Letter from Fisheries and Oceans Canada dated May 20, 2016
- TAB 3 - Letter from West Moberly and Prophet River First Nations dated March 9, 2016
- TAB 4 - Letter from Environment and Climate Change Canada dated April 4, 2016
- TAB 5 - Letter from Transport Canada dated June 18, 2016

Formatted: Font: 8 pt

Formatted: Font: 9 pt

Formatted: Font: 9 pt

Solicitor-Client and Litigation Privilege

TAB 6 - Letter from Fisheries and Oceans Canada dated July 7, 2016

TAB 75 - Background Information on Site C Project

Formatted: Line spacing: single

Formatted: Font: 9 pt

Formatted: Font: 9 pt

.../1

2015-009-00627— Scenario Note for the Minister: Meeting with West Moberly First Nations Chief Willson & Prophet River First Nation Chief
Lynette Tsakoza - E. Chernoff (613-993-7361) / C. Crance / C. Hilt / N. Winfield / P. Morel / S. Sharzer / gb

Solicitor-Client and Litigation Privilege

SCENARIO NOTE

s.21(1)(b) Meeting with West Moberly and Prophet River First Nations

Overview

You will ~~meet~~ meet with West Moberly First Nations Chief Willson & Prophet River First Nation Chief Lynette Tsakoza to discuss the Site C Project in British Columbia. The Chiefs will likely want to discuss your predecessor's May 20, 2016, response (Tab 2) to their request that processing and issuance of all federal permit applications, including an application for a *Fisheries Act* authorization, cease pending a decision by the Federal Court of Appeal, as well as their overall concerns with the Project.

1. DFO's Involvement in the Site C Project and Indigenous Engagement

BC Hydro's Site C Clean Energy Project is a third hydroelectric dam on the Peace River in northeast British Columbia. A Canada-British Columbia joint review panel conducted an environmental assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Panel concluded, among other things, that the Project would cause significant adverse effects on fish and fish habitat, and on fishing opportunities and practices for certain First Nations including the Prophet River and West Moberly First Nations, and that these effects cannot be mitigated. The Governor in Council (GiC) subsequently determined that the environmental effects of the Project are justified in the circumstances. In October 2014, the federal Minister of Environment issued a Decision Statement (re-issued on November 25, 2014) with legally binding conditions.

In November 2014, four First Nations groups (Doig River First Nation, Prophet River First Nation, West Moberly First Nations, and McLeod Lake Indian Band) filed an application for judicial review in Federal Court, challenging the Minister of the Environment's Decision Statement and the GiC's justification decision. They alleged, among other things, that the information before the GiC could not support a finding of justification, and that the GiC, in determining whether the Project was justified, ought to have, but did not, consider whether the Project would constitute an infringement of their treaty rights. In August 2015, the Federal Court dismissed the application for judicial review. In September 2015, the Prophet River First Nation and West Moberly First Nations appealed that decision to the Federal Court of Appeal. A one-day hearing has been set for September 14, 2016, in Montreal.

On September 30, 2015, BC Hydro was issued a *Fisheries Act* authorization to conduct initial site preparation works associated with the Project. On December 15, 2015, BC Hydro applied for a second *Fisheries Act* authorization for the construction of the main civil works (e.g., construction of the dam and generating station) and Project operations. BC Hydro has requested that DFO make a decision on the second *Fisheries Act* application ~~in June 2016~~ as soon as possible to avoid significant financial risks associated with construction delays.

Solicitor-Client and Litigation Privilege

DFO is coordinating Indigenous consultations on the current *Fisheries Act* application to the extent possible with Transport Canada, who are currently in receipt of an application for a federal permit for the Project under the *Navigation Protection Act*. Coordination between federal departments on federally permitting consultations with Indigenous groups is between Transport Canada and DFO only. CEAA is not currently involved in consultations with Indigenous groups on federal permitting.

Depending on the outcome of outstanding consultations, DFO may be in a position to make a decision on the current *Fisheries Act* application before Transport Canada makes their decision. Transport Canada and DFO are in agreement with this approach but will attempt to coordinate federal permitting decisions to the extent possible. As a result, discussions are likely to be held in the coming days within the federal family about whether decisions on the current applications before Transport Canada and DFO can be announced simultaneously.

In a March 2016 letter to the Minister of Environment and Climate Change and copied to DFO (Tab 3), the First Nations requested that the processing and issuance of all federal permit applications cease pending a decision by the Federal Court of Appeal on their appeal. They also requested that "no position" be taken on their appeal, and that a Ministerial-level meeting be arranged to allow discussion of their concerns.

Minister McKenna met with the Chiefs on March 1, 2016, and as follow-up to that meeting, and by way of response to the First Nations' March 2016 letter, she responded on April 4, 2016, to indicate that Canada would be taking a position on the appeal and deferring their other two requests (requesting a meeting and ceasing the processing of permit applications) to you and the other relevant Ministers for response (Tab 4).

A response letter was sent on May 20, 2016, from your predecessor (Tab 2) indicating he was willing to meet, but that DFO will continue consideration of the application before the Department for the Site C Project. On June 28, 2016, the Minister of Transport wrote to the Chiefs of the West Moberly and Prophet River First Nations to notify them that Transport Canada will continue to process the *Navigation Protection Act* application for the main civil works of the project (Tab 5).

Formatted: Font: Bold

From December 22, 2015, to present, DFO has conducted First Nations consultations focused on our regulatory decision to authorize the main civil works application currently under review. DFO contacted the Prophet River and West Moberly First Nations, along with ten other potentially affected First Nations groups, with various levels of reciprocal engagement.

In the case of the Prophet River and West Moberly First Nations, significant and consistent efforts have been made by DFO to arrange a meeting over the past five months through email, letters, phone calls and opportunistic office visits, with very limited return engagement. To date DFO has been successful at securing only one meeting with representatives of the West Moberly and Prophet River First Nations (the Nun wa dee Stewardship Society) on June 17, 2016, to discuss the main civil works application.

.../3

Solicitor-Client and Litigation Privilege

A key issue raised at the June 17, 2016, meeting with regional DFO staff was concerning the issuance of a *Fisheries Act* authorization before a Federal Court of Appeal decision on the appeal. It was communicated that the West Moberly and Prophet River First Nations are of the view that Minister Tootoo's May 20, 2016, letter, which states DFO "...will continue consideration of the *Fisheries Act* authorization application...", suggests that the Department will continue reviewing the application, but does not close the door on a potential moratorium on issuance of the authorization pending the Federal Court of Appeal decision.

In a letter following up on the June 17, 2016 meeting (Tab 6), DFO provided clarity that our position is that the Department will continue consideration of the *Fisheries Act* application, which includes review of the application, consultation with potentially affected Indigenous groups, and a decision on whether a potential authorization may be issued. The letter (Tab 6) also indicated DFO is now in more advanced stages of consideration of the *Fisheries Act* application.

Formatted: Font: Bold

Formatted: Font: Italic

Formatted: Font: Bold

Formatted: Font: Italic

Formatted: Font: Bold

s.21(1)(a)

s.21(1)(b)

Formatted: List Paragraph, No bullets or numbering

Solicitor-Client and Litigation Privilege

s.21(1)(a)

s.21(1)(b)

Objectives

Your overall objectives for the meeting are:

- to have an "on the record" conversation;
- to communicate the Department's commitment to a thorough and timely review of the current application, and;
- to communicate that the appeal hearing date set for September 14, 2016, does not influence DFO's timing to proceed with making a decision on the current *Fisheries Act* application.

Formatted: Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

.../5

Solicitor-Client and Litigation Privilege

Key Messages

- **I support the Government's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples, and I understand my officials have made significant efforts to provide opportunities for input on the current application since December 2015.**
- **My Department is committed to consulting First Nations on major development projects. We are also committed to completing thorough, efficient and timely reviews of applications under the *Fisheries Act*.**
- **I understand that you have raised concerns with the decisions that were taken for the environmental assessment of the Project, and that this issue is currently before the Federal Court of Appeal.**
- **I look forward to hearing your concerns since they are important for us to reach the completion of our review of the *Fisheries Act* authorization request on this project.**
- **~~You should also know that,~~ Subject to completing our review, I do not intend to wait until the appeal is heard on September 14 in the Federal Court of Appeal to make a decision on the current *Fisheries Act* application.**

**Pages 368 to / à 371
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**